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## NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 14th November, 1958:—

| Issue No. | No. and date | Issued by | Subject |
|---|---|---|---|
| 228 | S.O. 2337, dated 4th November, 1958 | Ministry of Law | Declaration containing the name of the candidate elected to the Council of states by the elected members of the Rajasthan Legislative Assembly. |
| 229 | S O 2338, dated 7th November, 1958 | Ministry of Commerce & Industry | Amendments to the Staple Fibre Control Order, 1958. |
| 229-A | S. O 2338-A, dated 12th November, 1958 | Ministry of Information and Broadcasting | Certification of films specified therein |
| 230 | S. O 2369, dated 13th November, 1958 | Ministry of Steel, Mines and Fuel | Amendment to the Iron and Steel (Control) Order, 1956 |
| 231 | S O. 2370, dated 12th November, 1958 | Election Commission India | List of contesting candidates in the Election to the House of the People from the Hoshangabad Constituency. |

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

## PART II—Section 3—Sub-section (ii)

## Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

### ELECTION COMMISSION INDIA

*New Delhi, the 3rd November 1958*

**S.O. 2373**.—Whereas the election of Shri C R. Narasimhan as a member of the House of the People from Krishnagiri constituency, has been called in question by an election Petition duly presented under Part VI of the Representation of the

People Act, 1951 (43 of 1951), by Shri M. G. Natesa Chettiar, Agriculturist, resident of Dharmapuri, Salem District;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADURAI-II, MADURAI

PRESENT:—

Shri P. K. Subramania Aiyar, B.A., B.L.,

Retired Judge of Travancore-Cochin High Court and Member, Election Tribunal.

*Tuesday, the 30th day of September 1958*

ELECTION PETITION No. 149 OF 1957

Sri M. G. Natesa Chettiar, son of M. V. Gurunatha Chettiar, residing at Dharmapuri, Salem District — *Petitioner.*

*Versus*

1. Sri C. R. Narasimhan, son of Sri C. Rajagopalachariar, care of Sri P. T. Venkatachariar, Advocate, Krishnagiri, Salem District.

2. Sri G. D. Naidu, son of Gopalswami Naidu, residing at Gopal Bagh, Avanasi Road, Coimbatore.

3. Sri R. Muthulinagam, son of Ratnavelu Goundar, Medical Practitioner, "Vanivilas Hospital", Dharmapuri, Salem District.

4. Sri R. Jagannathan, son of Ramaswami Pillai, Bus Service Checking Inspector, residing at 41-E, Thammama Chetty street, Arisipalayam, Salem, Salem District.

5. Shri P. N. Balasubramaniam, son of Sri P. R. Narayana Iyer, at Laligam post, Dharmapuri Taluk, Salem District (directed to be struck off)—*Respondents*

Election Petition under Section 81 of the Representation of the People Act (43 of 1951) as amended by Act 27 of 1956, filed before the Election Commission of India, on the 20th of April 1957, by registered post.

This petition coming on for final hearing on the 26th and 27th days of August 1958 and on the 1st, the 2nd, the 13th and the 21st days of September 1958, in the presence of Sarvasri P. Rangaswami Naidu, R. Rangarajan, A. Ramaswami, P. Srinivasan and S. Rajagopal, counsel for the petitioner, and of Sarvasri K. Narasimha Aiyangar, V. P. Raman, V. Sankaran and K. Lakshminarasimhan, Counsel for the 1st respondent,—and respondents 2 to 5 remaining absent and having been set *ex-parte*, and having stood over to this day for consideration, the Tribunal,—under sections 98 and 99 of the Representation of the People Act (43 of 1951) as amended by Act 27 of 1956, delivered the following Final Order:

ORDER

At the Second General Elections held in 1957, after the States Reorganization Act (37 of 1956) Sri C. R. Narasimhan (1st respondent), who had secured the seat for the single member Parliamentary constituency of Krishnagiri under the First General Elections conducted after the delimitation of constituencies under the Representation of the People Act (43 of 1950) and under the Representation of the People Act (43 of 1951) and the rules made thereunder, defeating the late Rao Bahadur Doraiswami Goundar of Krishnagiri by a majority of over six thousand votes, secured the seat a second time defeating Sri G. D. Naidu (2nd respondent) by a smaller majority of 367 votes. The poll was on 4th March, 1957 and the result was announced on 8th March, 1957 declaring the 1st respondent as the returned candidate. Of the three and a half lakhs of voters in the constituency, 1,44,184 cast their votes. The 1st respondent secured 57,683, the 2nd respondent 57,316, the 3rd respondent 15,617 and the 4th respondent 13,578 votes. The 1st respondent was sponsored by the Indian National Congress, the

4th respondent by another political party called the Dravida Munnetra Kazhagam and respondent 2, 3 and 5 were independent candidates. The 5th respondent withdrew his candidature.

2. The election was held under the Representation of the People Act (43 of 1951), (which will hereinafter be called the Old Act, and the rules made thereunder the old Rules) as amended by Act 27 of 1956, and the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, (which will hereinafter be called the Act and the Rules). Sri M. G. Natesa Chettiar, the petitioner, is an elector in the Krishnagiri Assembly constituency, which is one of the five Assembly constituencies, *viz.*, Hosur, Krishnagiri, Dharmapuri, Uddanapalli and Pennagaram, comprised in the Krishnagiri Parliamentary constituency, Salem District in the State of Madras. The 2nd respondent is not an elector in this constituency but is an elector in the neighbouring district of Coimbatore, and came to his constituency at the invitation of some friends of the petitioner, and chose this seat in preference to others for which he had filed nominations. Rao Bahadur Doraiswami Goundar worked for the 2nd respondent and arranged ten persons including P.W. 28 to do work. (deposition of P.W. 28, para 5, cross-examination). The petitioner spent money in connection with the election on behalf of the 2nd respondent without any idea of recoupment. The petitioner had a discomfiture at the hands of the Congress in the bye-election for the Dharmapuri Assembly Constituency held in 1955. Sri Subramanian Chettiar, the competing Congress candidate, won. The petitioner was a Congressman till 1951, but filed his nomination for the Dharmapuri and Krishnagiri Parliamentary constituencies as an Independent candidate in the First General Elections in 1952. He withdrew the latter, and confined himself to the former, in which also he did not vigorously work, though he did not formally withdraw. He would have contested the seat this time for the Krishnagiri Parliamentary constituency had not the 2nd respondent come on the scene. The 2nd respondent had his tour in the constituency towards the end of February in connection with which the petitioner was his host and was with him throughout. Ex. R-1 is the tour programme and the petitioner accompanied the 2nd respondent and addressed meetings with him in all the places therein mentioned.

3. The Congress had put up candidates in all the five Assembly constituencies, Sarvasri N. Ramchandra Reddi, Desai N. Venkatakrishnan, S. Nagaraja Maniagar, and M. Kandasami Goundar, for the Hosur, Uddanapalli, Krishnagiri and Dharmapuri constituencies respectively and Smt. Hemalata Devi for Pennagaram. All the five seats were contested. Sarvasri Mohanram, and M. N. Subbaraman (P.Ws. 5 and 32) contested the Krishnagiri seat and were defeated by the Opposing Congress candidate, Sri S. Nagaraja Manigar (R.W. 12). At Hosur, the Congress candidate Sri Ramachandra Reddi was defeated by the Independent candidate, Appavu Pillai, whose symbol, and that of Mohanram and the 2nd respondent, was the "elephant". At Uddanapalli also the Congress candidate, Desai N. Venkatakrishnan, was defeated by Muni Reddi, a mebmer of the party known as the Congress Reform Committee. Appavu Pillai, Mohanram and M. M. Subbaraman worked for the 2nd respondent.

4. This election petition, which claims a declaration that the election of the returned candidate (1st respondent) is void and a further declaration that the 2nd respondent has been duly elected, was received by the Election Commission on 20th April, 1957 by registered post, and a copy thereof was published in the Gazette of India dated may 20, 1957. The Election Commission appointed Sri K. S. Venkataraman, District and Sessions Judge, Vellore, as Election Tribunal and referred the petition to him for trial. Copies of the petition were served upon the respondent and notices were issued to them to appear before the Tribunal on 19th June, 1957. On that day respondents 1 and 2 entered appearance, the 4th respondent appeared in person and respondents 3 and 5 were *ex parte*. The 2nd respondent filed an application supported by an affidavit sworn to by D. K. Venugopal (P.W. 8) praying for three weeks' time to file his written statement. The Tribunal posted the next hearing to 10th July, 1957. On that day the 1st respondent filed written statement and the 2nd respondent did not file any, than or thereafter, probably because no notice had been given to the Tribunal either by the returned candidate or any other party of their intention to give evidence to prove that the election of the 2nd respondent would have been void had he been the returned candidate, under Section 97(1) of the Act, within the time, *viz.*, fourteen days, fixed therefor in the proviso, from the commencement of the trial, *i.e.*, 19th June, 1957. The 4th respondent was absent that day and was hence declared *ex-parte*. The 17th of July 1957 was fixed for the settlement of issues. Meanwhile Sri K. S. Venkataraman had requested for the

transfer of the petition to some other Tribunal which was allowed by the Election Commission, and the petition was withdrawn from him and referred to me for trial under Section 89 of the Act. After receipt of records here notices were issued to the parties to appear before me at the T. N. Palace, Madurai, on 10th September 1957, which was the date fixed for the settlement of issues On that day counsel for the 1st respondent filed a memorandum specifying, under 21 items, particulars of the charges made in the petition which were not given therein and were required by the 1st respondent. Upon this the petitioner was afforded an opportunity to apply for amendment of the petition in view of the objections of the 1st respondent in his written statement and in the said memorandum. The petitioner prayed for ten days' time in that regard which was allowed, and the case posted for 24th September, 1957. I.A. No. 1 of 1957 was accordingly filed on 21st September, 1957 by the petitioner, to which the 1st respondent filed objections on 8th October, 1957. 14th October, 1957 was fixed for the disposal of the petition for amendment and for settlement of issues. Orders were passed on I.A. No. 1 of 1957 on 14th October, 1957 allowing the amendments and directing incorporation of sub-parugraphs marked 'A' to paragraphs 15, 16, 26, 27, 29, 31 and 32. The petition was accordingly amended by incorporation of the said sub-paragraphs which were verified by the petitioner.

5. As the 1st respondent has submitted draft issues before the Tribunal at Vellore (Index No. 26), I directed the petitioner also to submit draft issues which he did on 14th October, 1957. (Index No. 62). On 14th October, 1957, I settled 16 issues for trial, making such changes in the drafts as were deemed necessary. Examination of witnesses was started on 16th December, 1957, and the next day, in the course of the examination, an omission to frame an issue upon the charge of a corrupt practice under Section 123(5) of the Act, contained in para 29 of the petition, was discovered and a new issue, No. 17, was framed on that day.

6. The issues, as settled finally, are:

1. Whether the Village Officers mentioned in paragraph 15-A assisted the 1st respondent by using their position and authority and canvassing votes for the 1st respondent and whether this was done at the instance of the 1st respondent, the Congress candidates to the Assembly and the agents of the 1st respondent?

2. Is the 1st respondent guilty of any corrupt practice under Section 123(7) of the Representation of the People Act (43 of 1951) as amended by Act 27 of 1956, as alleged in paragraphs 15, 15-A, 16, 16-A and 17 to 24 of the petition and is the election of the 1st respondent liable to be set aside under Section 100(1)(b) of the Act on this account?

3. Whether Shri R Appunu was an agent of the 1st respondent and whether he published, at the instance of the 1st respondent, the pamphlet alleged in paragraph 26 of the petition and whether such publication amounts to a corrupt practice under section 123(4) of the Act?

4. Whether the publication in the "Tamil Nadu" dated 4th February, 1957, regarding the withdrawal of the 2nd respondent from his candidature was made at the instance of the 1st respondent and whether such publication amounts to a corrupt practice under section 123(4) of the Act?

5. Whether the 1st respondent told Shri N C. Dharmalingam of Nagarasampatti falsely in the third week of February, 1957, that the 2nd respondent was not standing for the election and that he need not work for him, and whether the 1st respondent is guilty of a corrupt practice under section 123(4) of the Act?

6. Whether Mr Desai N. Venkatakrishnan, Uddanapalli Assembly candidate, wrote to the karnam of Bandapalli that he should secure votes for the 1st respondent and whether he sent to the karnam a printed appeal by the 1st respondent with Shri Venkatakrishnan's endorsement and whether this was done for and at the instance of the 1st respondent and with his connivance, knowledge and consent?

7. Whether the 1st respondent promised to the President of the Agaram Panchayat that he would give Rs. 1500/- for the construction of a common well and for repairing the village temple, to induce the villagers to vote for him in preference to other candidates?

8. Whether the 1st respondent spent, in connection with his election, any amount in excess of Rs. 25,000/-; whether the 1st respondent omitted to include in his account any item of expenditure actually incurred by him in connection with his election; and whether he is guilty of a corrupt practice under Section 123(6) of the Act?

9. Is the 1st respondent guilty of the corrupt practice under Section 123(3) of the Act as alleged in paragraph 32 of the petition and is his election liable to be set aside under Section 100(1)(b) of the Act on this ground?

10. Were the provisions of Rule 44 of the Rules not complied with as alleged in paragraphs 14, 33 and 34 of the petition and did such non-compliance, if any, materially affect the result of the election and is the election of the 1st respondent liable to be declared void under section 100(1)(d)(iv) of the Act?

11. Whether the booth No. 40 at Krishnagiri was opened an hour later than the due time and whether a large number of ladies who came to the booth in the morning had to return without voting and whether this amounts to non-compliance with Rule 35 and whether it materially affected the result of the election?

12 Whether votes in the names of dead persons were cast in favour of the 1st respondent; if so, how many? Whether this has materially affected the result of the election?

13. Whether the votes of Ramachandran Chettiar and five members of his family were recorded by false personation as alleged in paragraph 37 of the petition?

14. Is any part of the petition vague?

15. Is the petition, or any relief claimed in it, liable to be dismissed on the ground of the inclusion of the 5th respondent as party as alleged in paragraph 29 of the written statement of the 1st respondent?

16. Is the 2nd respondent to be declared duly elected as claimed in the petition?

17. Whether the 1st respondent hired jutkas for the purpose of taking voters to and from any polling booth?

(N.B. Counsel for the 1st respondent submits that his client has no charge of recrimination against the 2nd respondent).

7. The petition consists of 40 numbered paragraphs of which the first six are allotted to the name and description of the petitioner and each of the five respondents respectively. Paras 7 to 10 mention the several Assembly constituencies comprised in the Parliamentary constituency, the qualification of the petitioner to file the petition, the respondents that contested at the poll and the votes obtained by each. The 11th para reads:

"11. The petitioner states that the second respondent would have scored many thousands of votes more than the first respondent and would have been duly declared elected but for the commission of many acts of corrupt practices committed and the non-compliance with the rules made under the Act, as detailed hereunder".

The author or authors, and/or the person or persons, responsible for the corrupt practices alleged to have been committed are not mentioned in this paragraph and we have to take the concluding words "as detailed hereunder" indicative thereof. The 12th para states that the Congress put forward the 1st respondent as their candidate for the Parliament and candidates, whose names are mentioned, to each of the five Assembly constituencies. Paras 13 to 37 refer to corrupt practices. The 38th para is a repetition of the 11th, supplying the omission in para 11 by the addition of the words, "by the 1st respondent and his agents and supporters". The 39th para states that the required security had been deposited and the 40th and last claims both the reliefs under Section 84 of the Act, *viz.*, (1) a declaration that the election of the 1st respondent is void and (2) a further declaration that the 2nd respondent has been duly elected. It contains a third prayer for costs of this petition and "for such other order or orders as may be deemed just and equitable in the circumstances of this case". The verification states that the petitioner

has knowledge and belief in respect of paras 1 to 13 but only information and belief as regards the statements contained in the other paragraphs. Thus, the petitioner has no personal knowledge of any of the charges made in the petition.

8. Para 13 states that corrupt practices were extensive in the Krishnagiri Assembly constituency where the 1st respondent had a majority of over 5,400 votes over the 2nd respondent. Para 14 states that there were 601 polling stations in the constituency and over 4,000 officers on election duty therein out of whom 3,000/- were electors in this constituency and none of them could exercise their franchise on account of the violation, which is alleged, of rule 44 of the Rules which is quoted in extenso The 15th para refers to the fact that the Congress party, which put up the 1st respondent in this constituency as well as candidates for every Assembly constituency, is the leading political party in the country and has a countrywide network of organization, that the cabinets at the Centre and the Madras State at the time of the election were constituted by members of the Congress party and that "this party had a large pull with Government servants including village officers" and proceeds to say:

> "The Congress party took full advantage of its position, power and pull with these officers. As already stated, this party has a network of organisation throughout the country and in this Parliamentary constituency In this Parliamentary Constituency there were District Congress Committee, Taluk Congress Committees and also Village Congress Committees and these committees were very very active during the period of election in this constituency. There are about 1000 village officers in the Krishnagiri Parliamentary constituency. The petitioner states that every village officer gave assistance for the furtherance of the prospects of the Congress candidates' election including that of the 1st respondent's election. In getting the assistance of these village officers, there has been a conspiracy between the first respondent, the Congress candidates for election to the Assembly, the various agents who worked for the first respondent and others and also certain government servants."

Para 16 refers to the fact that Nagaraja Maniagar was the Congress candidate for the Krishnagiri Assembly constituency, that he was at that time the President of the District Congress Committee and that he won the seat. In Krishnagiri, that para proceeds to say, the Congress party had a further advantage in that there were two development blocks in connection with the development project at Krishnagiri and Kaveripatnam The person in charge of the Kaveripatnam block was stationed at Kaveripatnam which is also residence of Nagaraja Maniagar a member of the Block Development Committee. That Block Development Officer "has a great pull in the area under his jurisdiction."

> "The Block Development Officer, namely Mr. Venkataramanappa, although a gazetted officer, was actively assisting the first respondent and the Congress Assembly candidate in the election at the first respondent's instance and with his knowledge, consent and connivance and also at the instance of the Congress Assembly candidate Mr. Nagaraja Maniagar with his knowledge, consent and connivance, thereby committing a corrupt practice under section 123 of the Representation of the People Act 1951. It was an accepted practice and programme adopted by the Congress party through the various congress committees in this constituency under which the members of the Congress Committees at various levels put pressure on the village officers, particularly village karnams to give every assistance for the furtherance of the prospects of the election of the congress candidates."

The 17th para reads thus:

> "The abovementioned Block Development Officer, Mr. Venkataramanappa, gave assistance for the furtherance of the prospects of the first respondent's election in cooperation with village officers in the Krishnagiri constituency. The village officers of certain villages mentioned below particularly worked with the Block Development Officer to give assistance in furtherance of the prospects of the first respondent's election. They are village officers of Jaggasamudram, Sondalli, Penneswaramadam, Saparthi, Thimmapuram, Sundeguppam, Perimuthur, Kattlaganapalli, Boganapalli, Devasamudram, Kattinayanapalli and Kaveripatnam."

and paras 18 and 19 read as follows:

"18. The fact that the Block Development Officer and the village officers mentioned above gave assistance to the Congress candidates including the first respondent was mentioned in a petition dated 28th February, 1957, to the Assistant Returning Officer (The Tahsildar of Krishnagiri) by Mr. M. N. Subbaraman, who contested as an independent candidate to the Assembly from the Krishnagiri Constituency. On the counting date, namely 5th March 1957, this candidate presented another petition to the Returning Officer referring to these facts and refused to take part in the counting as no redress was given for the petition dated 28th February, 1957.

19. The petitioner believes that the information above given to the petitioner is correct and the Block Development Officer abovementioned and the village officers in Krishnagiri Assembly constituency particularly the village officers of the places mentioned above, were actively assisting the first respondent for the furtherance of the prospects of his election. They committed a corrupt practice under Section 123(7) of the Act and they committed this corrupt practice between the 3rd week of January and the fourth of March 1957. It was in the third week of January that the names of the Congress candidates including that of the first respondent were announced. The place of the commission of this corrupt practice is Krishnagiri Assembly constituency. The names of these village officers are not known to the petitioner, but they can easily be ascertained.

The 20th para must also be read:

"As already stated, the assistance of every village officer including the Karnams were pressed into service for the furtherance of the prospects of the election of the Congress candidates including the first respondent and the petitioner is in a position to give a few more instances".

The next three succeeding paragraphs, 21, 22 and 23, are devoted to detailing the instances, each based on a letter. Para 21 relies upon a letter written by Desai Venkatakrishnan, the Congress candidate for the Uddanapalli Assembly constituency on 31st January, 1957, to P. M. Krishnaswami Naidu, Karnam of Bandapalli, accompanied by a printed appeal by the 1st respondent containing Venkatakrishnan's endorsement, para 22 on a letter dated 27th February, 1957 written by a gentleman called M. Rama Reddi, one of the District Congress Committee members, to the said P. M. Krishnaswami Naidu and para 23 on a letter whose date is not seen mentioned but is gatherable from that para to be 19th February, 1957, written by the said Rama Reddi to one Chinnapayya, Village Officer of Kakkadasam in the Hosur Assembly constituency. Desai N Venkatakrishnan is described as an active agent of the 1st respondent and Rama Reddi as an agent of the 1st respondent, and the letter dated 27th February, 1957, is stated to have been written at the instance of the 1st respondent and the letter mentioned in para 23 also is stated to have been written at the instance of the 1st respondent and also at the instance of Ramachandra Reddi. The corrupt practice instanced in para 21 is stated to have been committed between 31st January 1957, and 4th March 1957, and the one in para 22 "on and after 27th February 1957, on various dates till the date of election, namely 4th March 1957, within Bandapalli village" and that under the 23rd para from 19th February 1957, to 4th March 1957, in Kakkadasam village in Krishnagiri Parliamentary constituency. The 24th para must also be quoted:

"The petitioner states that a similar corrupt practice under Section 123(7) was committed throughout the Parliamentary Constituency and the Congress Candidates for election including the first respondent, all members of the Congress committees at all levels and the Village Officers throughout the Constituency committed in all the village jurisdictions, by assisting the Congress candidates including the first respondent in furtherance of the prospects of their election and the commission of the offence was committed after the announcement of the names of the Congress candidates by the third week of January 1957 up to the date of election, namely 4th March 1957. It is not possible for the petitioner to give the names of all these village officers. The petitioner states that the candidates for election, the members of the Congress Committees and the Village Officers were hand in hand in furtherance of the prospects of the election of the Congress candidates including that of the first respondent. The petitioner states that but for this assistance given by persons in the

service of the Government coming within the categories mentioned in Section 123(7), the first respondent would not only not have secured the votes he scored, but might have even lost his deposit".

Thus, these ten paragraphs paint an alarming picture of a conspiracy between Congressmen, village officers and other Government servants, on the background and under the inspiration of the Central and State cabinets, around which pivot the election work in this constituency, in the interests of the Congress candidates for the seats for the Parliament and Assembly turned. Written communications are stated to have been addressed, and a gazetted officer is stated to have openly and fearlessly gone about for canvassing, notwithstanding a written complaint dated 28th February 1957 made by M. N. Subbaraman to the Assistant Returning Officer, the Tahsildar of Krishnagiri. On scrutiny, however, it will be found that except a mention of Subbaraman's complaint in para. 18, Venkatakrishnan's letter in para. 21 and Rama Reddi's letter in paras. 22 and 23, all the rest of it are utterly vague and out of place, liable to be struck off, under Order VI rule 16 of the Code of Civil Procedure, as the Supreme Court did all but one of the 15 charges in *Bhokaji Keshao* V. *Brijlal Nandlal* (A.I.R. 1955 Supreme Court 610), had a prayer in that behalf been made by the 1st respondent. He, however, did not make such a prayer for immediate consideration, though he complained of vagueness of the charges in his written statement and their liability to be struck off as vague. On the date fixed for settlement of issues here the 1st respondent by his memorandum asked for particulars of the various charges from the petitioner. Having regard to the observations of their Lordships in Khokaji Keshao's case:

> "While undoubtedly the Tribunal has, in our opinion, taken all too narrow a view of their function in dealing with the various alleged defects in the petition and in treating them as sufficient for dismissal, the petitioners are not absolved from their duty to comply, of their own accord, with the requirements of Section 83(2) of the Act and to remove the defects when opportunity was available", (Page 617).

an opportunity was afforded to the petitioner by me to supply the requisite particulars. The petitioner's response was the presentation of I.A. 1 of 1957 for amendment which resulted in the addition of sub-paragraphs marked 'A' to paragraphs 15, 16, 26, 27, 29, 31 and 32. In the application for amendment, however, he appeared to have sought to introduce a new corrupt practice of bribery under Section 123(1) of the Act, which on being pointed out by the 1st respondent was struck down and the rest of the amendment alone was allowed. Even after the amendment, in describing the parties to the conspiracy said to have been hatched in the last sentence of para. 15, the last portion whereof is "and also certain Government servants" has not been clarified and the words remain as they were, leaving the Government servants still uncertain. In para. 15-A, in detailing the village officers who are alleged to have assisted the 1st respondent, the sub-paragraph starts thus: "The Village Officers who were concerned in assisting the 1st respondent *among other* are *mainly*" and the names of 10 persons are sub-joined, numbering them 1 to 6 and 8 to 11, omitting the numeral '7'. Of these, No. 2 is Chinnapayya, described as Village Officer, Kakkadasam, Hosur Taluk, who is the Chinnapayya in para. 23 of the petition. No evidence was tendered in respect of the charge in para. 23, nor was the letter alleged to have been written by Rama Reddi to Chinnapayya got produced. The petitioner swears that he knew Chinnapayya and that he was the Village Munsif of Kakkadasam, that he sent for him to Hosur where he went and showed the letter referred to in para. 23 of the petition as also the one written by Rama Reddi to P. M. Krishnaswami Naidu, both of which were returned to him under a promise to produce them in Court when cited (*vide* para 32 of P.W. 4's deposition). In the course of the arguments, counsel for the petitioner submitted that no evidence was given in respect of the letter referred to in para. 23 because it was written to the Village Munsif and Village Munsifs do not come under Section 123(7)(f) of the Act, as they did under the corresponding Section 123(8)(b) of the old Act, and that therefore the averment in para. 23 would not constitute a corrupt practice. Of the rest, Nos. 4, 5, 10 and 11 are also Village Munsifs, and the 9th is a talayari included in Section 123(8)(b) of the old Act but not in Section 123(7)(f) of the Act. There remains only Nos. 1, 3, 6 and 8 for consideration. A rider is added in para 15-A, thus "and the names of the village officers of Jaggasamudram, Sondelli, Saparthi and Kaveripatnam *and other villages* have to be given when the list of witnesses is furnished, on ascertaining their names precisely". Para. 15 states: "They were using their position and authority as Village Officers and canvassing votes to the Congress party (ruling party) meaning thereby the 1st respondent and threatening the

voters not to vote for the opposite candidates. They have been so assisting the 1st respondent in their respective villages from the date of nomination to the date of election, more intensely on 31st January 1957, 19th February 1957 and 25th to 28th February 1957, 1st March 1957 to 4th March 1957". After ascertaining the names an application was made by the petitioner in I.A. No. 7 of 1958 for inclusion of two more names and particulars of the time and nature of their assistance to the 1st respondent. The application was allowed by order dated 3rd February 1958, and an additional sub-para., sub-para. 15-B, was incorporated in the petition. After this amendment the 1st respondent filed an additional written statement and the original statement filed by him was amended by incorporation of sub-para. 11-A to para. 11 of the written statement. Even after the amendment, the charge laid under Section 123(7)(f) of the act remains vague. Section 83(1)(b) of the Act enjoins setting forth full particulars of the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice. The particulars brought in by para. 15-A do not clarify the date of the alleged commission of the corrupt practice. Two specific dates, 31st January 1957 and 19th February 1957, are no doubt given but no other specific date is given; only a period of time, "from the 25th of February to the 4th of March" is indicated. Any incident may be proved as having happened on any one or more days comprised in this period. The particulars supplied by sub-para. 15-A still leave the matter vague in so far as the date is concerned, as the sentence therein in this regard is, "The canvassing by the Block Development Officer was done from the date of nomination till the date of election, more intensively in the last week of February 1957." As a result of the addition of the particulars, the complaint of a mobilisation of a huge force of 1000 village officers throughout the constituency openly working in the interests of the Congress candidates throughout the constituency, came down into an averment still vague as regards the date to six karnams having canvassed each in his own village. The supply of particulars itself was after about six months from the publication of the petition in the gazette. In *Mallappa Basappa v. Basavaraj Ayyappa* (A.I.R. 1958 Supreme Court 698) at 701, Col. 2 para. 11, their Lordships of the Supreme Court say as follows:

> 'An Election Petition presented to the Election Commission is scrutinised by it and if the Election Commission does not dismiss it for want of compliance with the provisions of Section 81, Section 82 or Section 117 of the Act, it accepts the same and causes a copy thereof to be published in the official gazette and a copy thereof to be served by post on each respondent. The respondents to the petition 'not only (sic) get notice of the same but the constituency as a whole receives such notice by publication thereof in the official gazette so that each and every voter of the constituency and all parties interested become duly aware of the fact of such Election Petition having been presented.' A copy of the Election Petition published in the official gazette would also show to all of them that the petitioner in a particular Election petition, in addition to claiming a declaration that the election of all or any of the returned candidates is void, has also claimed a further declaration that he himself or any other candidate has been duly elected. The whole constituency is thus alive to the fact that the result of the election duly declared is questioned on various grounds permitted by law with the likely result that the election of all or any of the returned candidates may be declared void and the petitioner or any other candidate may be declared duly elected, in place and stead of the returned candidate."

In Manchester (1892 Day's Election Cases, 153, 154) Cave, J. said: "Those who draw particulars should understand they are not at liberty to throw charges about broadcast, but should confine themselves, as far as can reasonably be done, to those charges which they actually have the means, or expect to have the means, of establishing at the trial." Charges in an election petition, which, on publication, would be read by the entire constituency, may afford an opportunity to interested persons, and would be an invitation for them, to approach the petitioner and offer evidence at the trial and prove particulars subsequently furnished. The delay in furnishing particulars has this infirmity, and very weighty evidence would have to be adduced to instil confidence in the Tribunal. No case of a corrupt practice can be looked at unless it is pleaded with the utmost particularity and unless it is proved as laid. The pleading of a corrupt practice under Section 123(7) (a) and (f) of the Act is defective in this regard, and it may not be wrong to refuse to look at it for that reason. However, evidence having been adduced and as this order is subject to appeal to the High Court under Section 116-A of the Act, I proceed to consider the evidence and record my findings.

9. The two issues in this regard are the first and the second, which are as follows:—

1. Whether the Village Officers mentioned in paragraph 15-A assisted the 1st respondent by using their position and authority and canvassing votes for the 1st respondent and whether this was done at the instance of the 1st respondent, the Congress candidates to the Assembly and the agents of the 1st respondent?

2. Is the 1st respondent guilty of any corrupt practice under Section 123(7) of the Representation of the People Act (43 of 1951) as amended by Act 27 of 1956, as alleged in paragraphs 15, 15-A, 16, 16-A and 17 to 24 of the petition and is the election of the 1st respondent liable to be set aside under Section 100(1)(b) of the Act on this account?

In view of the incorporation of para 15-B to the petition, the 1st issue has to be amended by substituting the words "paragraphs 15-A and 15-B" for "paragraph 15-A". Of the ten persons mentioned in para 15-A five, namely, numbers noted as 2, 4, 5, 10 and 11 are village munsifs and No. 9 is a talayari who came in under Section 123(8)(b) of the old Act but were omitted in the Act and do not come under the corresponding Section 123(7)(f) of the Act. What remains to be regarded is only the case in respect of Nos. 1, 3, 6 and 8. Two persons noted as Nos. 4 and 10 are stated to have been Village Munsif *cum* Karnam by Subbaraman (P.W. 32) and by Varadarajan (P.W. 33). This statement cannot be heeded as the petition styles them as Village Munsifs. Even here, there are two more limitations to be considered, *viz.*, the averment is that these karnams acted in their respective villages and their action was on 31st January, 1957 or 19th February, 1957 or in the period between 25th February, 1957 and 4th March, 1957. The cases as regards the two karnams brought in by paragraph 15-B also fall to be regarded with reference to the particular places and time mentioned in that sub-paragraph. There is no evidence adduced of anything having been done by any of the six karnams mentioned in sub-paras 15-A and 15-B, either on 31st January, 1957 or on 19th February, 1957, and a scrutiny of the evidence of the petitioner's witnesses relied on by the petitioner, *viz.*, P.W. 28 for No. 1 P.M. Krishnaswami Naidu, karnam of Bandapalli, P.Ws. 18, 19, 20, 21, 28, 29, 32, 33 and 34 for No. 3 Bindhu Madhava Rao, karnam, Dowlatabad, Krishnagiri, P.Ws. 5 and 32 for No. 6, Ranganathan Rao, karnam of Sundeguppam and P.Ws 11, 16, and 34 for No. 8, Jaya Rao, karnam of Periamuthur, will show that only P.W. 14 and P.W. 28 speak to any event within that period. Of all the witnesses for the petitioner, only two more, *viz*, P.W. 12 and 14, speak to any event within that period The evidence of these last two need not be considered as it has no reference to the four karnams concerned. P.W 11 speaks about both Nos. 6 and 8. As regards No. 8, Jaya Rao, karnam of Periamuthur, what the witness speaks to is about Jaya Rao having canvassed in Chinnamuthur, and in para 15-A the activities of karnams complained of are only in respect of their respective villages, and Jaya Rao, is the karnam of Periamuthur and not of Chinnamuthur.

10. The evidence may now be considered. The first karnam is P. M. Krishnaswami Naidu and the averment about him is contained in para 21 of the petition. It is alleged that "on 31st January, 1957, Desai Venkatakrishnan, the Congress candidate for Uddanapalli Assembly constituency, wrote a letter to Sri P. M Krishnaswami Naidu, karnam of Bandapalli, for his active assistance in securing votes for the furtherance of the prospects of the Congress candidates' election including that of the 1st respondent, and this assistance was given.

> "The petitioner states that even to attempt to obtain any assistance from any person in the service of the government for the furtherance of the prospects of a candidate's election is a corrupt practice under Section 123(7) of the Act. The petitioner understands that along with this letter Mr. Desai N. Venkatakrishnan has sent to the karnam a printed appeal by the 1st respondent with Mr. Desai N. Venkatakrishnans endorsement. The letter and the endorsement are in the handwriting of Mr. Desai N. Venkatakrishnan. This Assembly candidate Mr. Desai N. Venkatakrishnan was an active agent for the first respondent and as is disclosed by the first respondent's Return of Election Expenses, the first respondent paid to Mr. Desai N. Venkatakrishnan a sum of about Rs. 1700/- for the furtherance of his election in that area. The petitioner states that everything this Assembly candidate did in furtherance of the election of the Congress Candidates namely himself and the first respondent was done at the instance of the first respondent and with his connivance, knowledge and consent and the first respondent is a party to the commission of the

corrupt practice under Section 123(7) of the Act and this offence was committed by the persons abovementioned between 31st January, 1957 and 4th March, 1957, and was committed in Bandapalli village of Uddanapalli Assembly Constituency included in the Krishnagiri Parliamentary Constituency."

The period of commission of the offence mentioned in this paragraph as between 31st January, 1957 and 4th March 1957, has afterwards been confined to two specific dates, 31st January, 1957, 19th February, 1957, and the period from 25th February, 1957 to 4th March, 1957. The letter and the enclosure mentioned in this para are stated to be those produced by Krishnaswami Naidu, P.W. 28, who was summoned to produce these as also the two letters mentioned in the two succeeding paras 22 and 23, which are stated to be letters written by Rama Reddi, one to P. M. Krishnaswami Naidu and the other to Chinnapayya, Village Munsif of Kakkadasam. The petitioner (P.W. 4) swears that before the petition was filed he sent for Chinnapayya at Hosur who met him there with the said two letters written by Rama Reddi which were shown to and read by him but returned to Chinnapayya for production in Court as evidence in the election petition proposed to be filed. Chinnappayya is No. 68, and Krishnaswami Naidu (P.W. 28) No. 62, in the petitioner's list of witnesses and neither is therein stated to have any document in his possession to be produced. Chinnapayya was not called. In the summons taken out for Krishnaswami Naidu the batta memorandum (Index No. 77) prayed for the inclusion of the following four documents which are stated to be in his possession, to be produced by him in Court:

1. Letter dated 31st January, 1957, written by Desai N. Venkatakrishnan to P. M. Krishnaswami Naidu, Bandepalli.

2. Pamphlet issued by Sri C. R. Narasimhan with the endorsement of Sri Desai N. Venkatakrishnan.

3. Letter written by M. Rama Reddi on 27th February, 1957, to P. M. Krishnaswami Naidu, Karnam, Bandepalli.

4. Letter written by M. Rama Reddi on 19th February, 1957, to Chinnapayya, Village officer of Kakkadasam.

He produced the first three which have been marked as Exhibits P. 15, P. 16 and P. 17 respectively but not the fourth, and he was not asked the reason why."

11. When documents are mentioned in the petition as constituting corrupt practices which are alleged against the respondent, they are to be regarded as documents on which the petition is based and ought to be produced along with the petition by the petitioner if in his possession and if not, the person in whose possession they are should be mentioned in the petition and steps taken to secure their production in Court, before the respondent is asked to enter his defence. The provisions of Order VII rules 14 and 15 of the Code of Civil Procedure have to be applied in such cases. Rule 15 provides that "where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is". It was admittedly possible for the petitioner to state in whose possession or power the documents mentioned in paras 22 and 23 of the petition were. The documents mentioned in para 21 would normally be in the possession of the addressee, P. M. Krishnaswami Naidu. If so, no special mention of their possession was called for, as their possession is implied in the pleading that they were addressed to him. If, however, the addressee was not in possession but some one else was, the information was with the petitioner as he must have been told about it along with the details of the contents of the documents which he incorporated in para 21. There is no averment in the petition as to the possession of the documents mentioned in para 21 and the natural presumption therefore would be that they were in the possession of the addressee. If that possession changed, that change must have been indicated in the petition. In the absence of such indication, when the documents are seen to be in the possession of a person other than the addressee, it should ordinarily be taken that the documents did not reach the addressee. No information is tendered by or on behalf of the petitioner as to how and when the documents came into the possession of Krishnaswami Naidu P.W. 28. The batta memorandum requesting a direction in the summons to him to produce the four documents was put in Court on 7th November, 1957, (Index No. 77) and the petitioner went into the box only on 16th December, 1957, and he was asked about the documents on 18th December, 1957, when he said that he did not see P. M. Krishnaswami Naidu but saw Chinnapayya and the two letters of Rama Reddi mentioned in paras 22 and 23 of the petition with him. The source of the information regarding the contents of the letter

mentioned in para 21 was not revealed by him and his evidence leads to the inference that on the date of his examination, *i.e.*, 18th December, 1957, the two letters that he saw with Chinnapayya were still in his possession. He was not confronted with his own batta memorandum (Index No. 77). Krishnaswami Naidu (P.W. 28) was a worker for the 2nd respondent. He was besides, his polling agent and counting agent. He says that on 1st March, 1957, he went to Bandapalli and met karnam P. M. Krishnaswami Naidu and sought his support for the 2nd respondent. He was clerk of Advocate Sri Kuppuswami Pillai of Krishnagiri which service he says he left, of his own accord. In cross-examination he says he knew that it was not proper to seek support from karnams for election, and yet he went to seek it and it was then that the karnam handed over to him two manuscript letters, Exhibits P-15 and P-17, and the printed matter, Ex. P-16, expressing his inability to support the 2nd respondent as his brother-in-law Desai N. Venkatakrishnan was the Congress Assembly candidate for Uddanapalli and was working with the 1st respondent and it would not therefore be possible for him to support the 2nd respondent. He kept Exs. P-15, P-16 and P-17 with him as he says, to show them to Desai Venkatakrishnan and he showed Ex. P-15 to Desai Venkatakrishnan and Ex. P-17 to Rama Reddi and secured admissions from them that they are in their respective hands—pure hearsay for this case. P.W. 28 does not say that he parted with the letters or any of them at any time, and says that he met the petitioner at Rao Bahadur Doraisami Goundar's house three days after the counting, which was on 8th March, 1957, and talked to him about the letters and the petitioner did not demand those letters of him for production with the petition. How is it then that the petitioner saw the two letters of Rama Reddi, Ex. P-17 mentioned in para 23, and the other mentioned in para 22, with Chinnapayya ten days before the election petition was filed? Both versions cannot be true; but both might be false or, it may be, that the one is true and the other is false. It is not possible, in the circumstances, to act upon either version, that is to say there is no reliable evidence in the case either that the letters were written by the respective persons or that they reached the addressee. There is no evidence at all of the statement in para 21 of the petition that the printed matter accompanied the manuscript letter mentioned therein. The whole thing is shrouded in mystery. Rama Reddi was not called, nor was Desai Venkatakrishnan, nor do their names even appear in the petitioner's list of witnesses. P.W. 28 does not qualify himself to speak to the genuineness of the letters, even assuming that he had occasion to see a letter or two received at his advocate's office purporting to proceed from Rama Reddi and Desai Venkatakrishnan. He does not say he conducted any correspondence with them that is to say, that he wrote to them and received replies from them. His statement that Exs. P-15, P-16 and P-17 contain the handwriting and signature of Desai Venkatakrishnan and Rama Reddi does not constitute proof of the documents.

12. Desai Venkatakrishnan was associated with the 1st respondent in the matter of election and they were doing some part of the election campaign in common, though each had his separate and individual activity in that regard for advancing their separate and individual interests. The 1st respondent entrusted amounts with Desai Venkatakrishnan and the Congress candidates for Hosur, Krishnagiri and Dharmapuri constituencies, and the election agent, Sri A. Subramaniam, of Hemalata Devi, the Congress candidate for the Pennagaram Assembly constituency, as his share of the expenses of the arrangements at the polling stations to be made in common, in advance, entrusting them with the responsibility of making adequate arrangements irrespective of their cost. He also gave money to Desai Venkatakrishnan and Subramaniam towards travelling expenses for distribution of his election manifesto. There can be no doubt that under these circumstances the four Assembly candidates and A. Subramaniam were the agents of the 1st respondent in the election and that their acts would bind him, leaving him to the relief, if need be, under the second clause of Section 100 of the Act. The petitioner's averment that Desai Venkatakrishnan was the 1st respondent's agent is correct.

13. The question then is whether Exs. P-15 and P-16 are the documents on foot of which charge of a corrupt practice under section 123(7)(f) of the Act is laid against the 1st respondent. Exs. P-15 and P-16 are assumed to be true for the purpose of considering this question. Ex. P-15 is a letter by Desai Venkatakrishnan to his younger sister's husband, P.M. Krishnaswami Naidu, whom he calls "Bava" which is the respectful Telugu expression for 'brother-in-law', and requests him to tender his vote to him as he has been chosen as a Congress candidate with the symbol of oxen with yoke on. It contains a further request to tell his relations also to do likewise, as the election is nearby. He makes enquiries of his sister. This

document concerns only Desai Venkatakrishnan and his candidature, and has no reference at all to the 1st respondent. It is purely an affectionate appeal made by one relation to another in their domestic and personal capacity. The official capacity of the addressee is not invoked, nor is the exercise of any influence attached thereto asked for. Indeed, one cannot gather from the letter that the addressee is a karnam. Desai Venkatakrishnan writes this as a member of the family and all for himself, and does not refer to or rely upon any other capacity as agent or otherwise that he may have had. This letter cannot constitute, nor can it form the foundation, of, any corrupt practice under section 123(7)(f) even as regards the writer, though the addressee is a karnam as it is purely a private letter by one relation to another. The Supreme Court held in *Raj Krushna* v. *Binod* (A.I.R. 1954 Supreme Court 202) that a government servant can be a proposer or a seconder of a candidate. In *Satya Dev* v. *Padam Dev* (A.I.R. 1954 Supreme Court 587) their Lordships held that a government servant can be a polling agent without offending section 123(8) of the old Act. Their Lordships reaffirmed their opinion on review of the case in A.I.R. 1955 Supreme Court 5 (*Satya Dev* v. *Padam Dev*). The view was affirmed by their Lordships again in A.I.R. 1956 Supreme Court 335. It was observed, however, that should the appointment be an occasion for exploiting the capacity of the person as a government servant and his influence as such, the matter might be different. The Allahabad High Court, in *Mohamed Ibrahum* v. *Election Tribunal, Lucknow* (A.I.R. 1957 Allahabad 292) held that merely because some service of a person who happens to be a Government servant is availed of by a candidate, it would not amount to a corrupt practice under section 123(B) of the old Act. Their Lordships observe at page 296:

> "The intention of the framers of Section 123, sub-section (8) appears to have been to keep Government servants, in their capacity as such, out of politics and out of, so to speak, electioneering tactics. In my view, unless the assistance of a Government servant is taken because he was a Government servant, with the intention of furthering the election prospects in some manner the mere taking of assistance of a Government servant is not enough to attract the provisions of the sub-section.
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> is not, therefore, every act which is done by a Government servant at the instance of a candidate or his agent which comes within the mischief of sub section (8) of Section 123, even though it may incidentally result in furthering the election of a candidate in some form, for if that were so, then a candidate or his agent would, in my opinion, be unable to utilise the utility services run by Government like the post offices, or the Railways, or the bus transport services."

There being no mention at all made of the 1st respondent in Ex. P-15, he cannot be affected by it even if it is offensive, which it is not.

14. The averment in para 21 is that on 31st January, 1957, Mr. Desai Venkatakrishnan, the Congress candidate for the Uddanapalli Assembly Constituency, wrote a letter to P. M. Krishnaswami Naidu, Karnam of Bandepalli, for his active assistance in securing votes in furtherance of the prospects of the Congress candidates' election including that of the 1st respondent and this assistance was given. Ex. P-15 is not and cannot be, that letter, because the letter mentioned in the petition is one "for the furtherance of the prospects of the Congress candidates' election including that of the 1st respondent," as the letter is one asking for the assistance of the addressee for the prospects of the election of a plurality of Congress candidates including the 1st respondent, which Ex. P-15 is not, as it is confined to the writer, Desai Venkatakrishnan, and is not concerned with any other candidate. The production of Ex. P-15 and its proof would not, therefore, amount to proof of the charge laid in para 21. The letter whose existence is averred in para 21 is not before Court. That para further avers that there was an enclosure to that letter in the shape of a printed pamphlet which is the 1st respondent's appeal with an endorsement by Desai Venkatakrishnan. Ex. P-16 might answer that description. There is nothing offensive in Ex. P-16. It is a printed appeal forming the 1st respondent's election manifesto. He claims that the Congress party has done yeoman service to the country in the first five-year plan after Independence and in the second five-year plan which is in progress. The 1st respondent claims to have secured, by his efforts, various amenities to his constituency including the Block Development, now known as National Extension Scheme. The evidence shows that Kaveripatnam stands first in the matter of such development and utilisation of funds allotted therefor. The endorsement of Desai Venkatakrishnan in manuscript at the foot of this manifesto is merely to the effect

that he is the Congress candidate for the Uddanapalli Assembly constituency. There is nothing blameworthy in this. Counsel for the petitioner argues that Exs. P-15 and P-16 must be read together, and the appeal made in Ex. P-15 applied to, and be regarded as, one made for the 1st respondent, as the two papers were sent to the addressee together. As to this, there is no evidence at all. The matter stops at the stage of an averment in the petition which only states that the "petitioner understands that along with this letter Desai Venkatakrishnan sent a printed appeal of the 1st respondent" Ex. P-15 does not refer to Ex. P-16 which it would have done had it been an enclosure to, or accompanied it. In the absence of evidence that the two papers were sent together, the argument cannot even be advanced There is no reliable evidence that either Ex. P-15 or Ex. P-16 reached Karnam P. M. Krishnaswami Naidu. Assuming for argument's sake, that the two reached P. M. Krishnaswami Naidu, and reached together, it is not possible to regard that Ex. P-15 underwent a matamorphosis and became an appeal for support of the karnam using his official capacity on behalf of the 1st respondent. The appeal in Ex. P-15 is to the personal capacity of the addressee. Whether the appeal be made by Desai Venkatakrishnan on behalf of himself or on behalf of the 1st respondent as well, the appeal still would be one made purely to the personal capacity of P.M Krishnaswami Naidu and not one invoking, or asking for the exercise of his official capacity as karnam Indeed, one cannot gather from Ex. P-15 that Krishnaswami Naidu was a karnam, and that expression, and that concept, are foreign to that document.

15. Another instance of a charge under section 123(7) laid against the 1st respondent is given in para 22 of the petition. It is this—One Rama Reddi wrote a letter to P. M. Krishnaswami Naidu, Karnam of Bandepalli on 27th February 1957 requesting him to work and canvass votes of others for both the Congress candidates, viz., the 1st respondent and Mr. Desai Venkatakrishnan, the Assembly candidate. The para seeks to connect the 1st respondent with it by stating "that this letter was written at the instance of the 1st respondent," and averring that Rama Reddi "was an agent of the 1st respondent". Ex.-P-17 is put forward on behalf of the petitioner as that letter. Apart from the infirmities in its emergence, and the absence of proof already adverted to, there is absence of the other letter mentioned in para 23, which is one of the twines delivered by Rama Reddi. There is a clear contrast between the averments in para 21 relating to Ex. P-15 and those in para 22 relating to Ex. P-17. Whereas para 21 says that in response to the assistance asked for from Desai Venkatakrishnan that assistance was given, there is absence of such an averment, or of any reaction of the addressee, in para 22 about Ex. P-17. That absence indicates that whereas Ex. P-15 was delivered to the addressee and had its effect, Ex. P-17 was only written and not delivered. The petitioner's stand is, as expressed in para 21, that even an attempt to take any assistance would be a corrupt practice; but in the case of Ex P-15 the matter had passed beyond the stage of an attempt. In the case of Ex. P-17, however, that other stage had not been reached, but stopped at an attempt which consists in the letter being written The mere writing of the letter, however, offensive it might be will not amount to an attempt but only to a preparation, unless it is delivered to the addressee. Assuming however that the mere writing of a letter would amount to an attempt, unless its link with the 1st respondent as averred is forged and established by evidence, it will not affect the 1st respondent as a corrupt practice under section 100(1)(b) of the Act, though it might come under section 100(1)(d)(ii) of the Act and the petitioner has no case of this constituting a corrupt practice under the latter provision, as is clear from the second issue which relates, *inter alia*, to the charge under this para and issues 10, 11 and 12 which relate to charges under other paragraphs which are relied on as constituting a corrupt practice under section 100(1)(d)(iv) of the Act The petitioner has tendered no evidence to prove that Ex. P-17 was written at the instance of the 1st respondent and the only endeavour to prove the alleged agency is made by the petitioner himself (deposition of P.W. 4, para 3 chief-examination and para 32, cross-examination). To merely style one person as another's agent would not amount to proof of agency. Agency must arise out of direct appointment or it should be inferable from conduct and circumstances. Neither is proved, and the petitioner is incapable of proving it of his own showing, as the averment in para 22 was, as his verification shows, made not on personal knowledge but only on information. In the absence of either of the links and neither has been proved to be present, the 1st respondent can in no way be held responsible for Ex. P-17 Rama Reddi, the writer, though in the witness list of the petitioner, as already stated, has not been called The 1st respondent's case is that he had nothing to do with Rama Reddi at all in the matter of the election and that he was neither his agent nor was he working for him On the other hand, he was working against the interests of the Congress for Appavu Pillai, an Independent candidate for the Hosur Assembly seat who competed with

Ramachandra Reddi. Written complaints were made against Rama Reddi, among others in Exs. R-6 and R-7, in this regard, after elections, pursuant to a circular, Ex. R-5, issued by the Tamil Nad Congress Committee. These documents were produced and proved by R.W. 1 Raghunathan. The circumstance that he produced Ex. R-5 though not specially summoned to do so, does not militate against his veracity or against the evidentiary value of the documents produced. Ex. P-17 has not been proved to have been written by Rama Reddi. P.W. 28 is incompetent to prove it. The circumstance that it is engrossed on a letter head purporting to be that of Rama Reddi, which may have to be regarded had it been sought to be used against Rama Reddi, is of no moment in this case in the absence of any other admitted or proved document of Rama Reddi engrossed on paper containing a similar letter head. The matter may now be considered on the assumption that Ex. P-17 is genuine.

16. Ex. P-17 is not offensive. Though it describes the addressee as karnam, it does not invoke the exercise of the addressee's capacity as a karnam and does not, therefore, amount to a corrupt practice within section 123(7)(f) of the Act (Vide A.I.R. 1957 Allahabad 292). There is no evidence in the case to prove when and by whom Ex. P-17 was written. It is suggested on behalf of the 1st respondent by his learned counsel that it is a later connection It might be so, especially in view of the fact that there is not, in the document itself or anywhere any evidence of any confirmatory circumstance from which it can be said that it saw the light of day on the date it bears. It does not appear to have been despatched. No postal cover is produced nor does the paper Ex. P-17 reveal any indication of its having been transmitted by post. Under the circumstances I find that the 1st respondent is not guilty of the charge laid against him in para 22 of the petition.

17. The charge as regards No. 3 in para 15-A, viz., T. V. Bindhu Madhava Rao, may now be considered. The petitioner's case is that Bindhu Madhava Rao is the villain of the piece and as many as nine witnesses have come forward to depose about his interference in the election to assist the 1st respondent. Of these witnesses, however, none except Krishnaswami Naidu (P.W. 28) speaks to any act of his within the time limited in para 15-A. What Krishnaswami Naidu says is that six days before the election he saw the 1st respondent with S. R. Narayana Ayyer and Bindhu Madhava Rao in the street in which he resides, returning from one Venkatachalam Chetti's house and that *they* formally asked him for his vote. He says also that he saw Bindhu Madhava Rao distributing slips to voters in the Congress office. The 1st respondent as R.W. 3 and S. R. Narayana Ayyar (R.W. 15) deny this incident. Even taking P.W 28's statement at its face value, it will not amount to a corrupt practice under section 123(7)(f) of the Act, as he does not attribute any act to Bindhu Madhava Rao except distributing slips in the Congress office. The story is, on the face of it, incredible. The witness was one of the ten persons appointed by Rao Bahadur Doraiswami Goundar to work for the 2nd respondent. He is responsible for and he has lent, his services to the petitioner in the matter of producing in Court Exs. P-15, P-16 and P-17 and he is himself a person who, on his own confession, sought the help of karnam P. M. Krishnaswami Naidu for advancing the prospects of 2nd respondent's election knowing the impropriety of that conduct. No reliance can be placed upon his testimony.

18. The testimony of the other witnesses who speak to the interference of Bindhu Madhava Rao, though beyond the period limited by para 15-A, may now be noticed. But before doing so the evidence of Bindhu Madhava Rao may itself be considered. Bindhu Madhava Rao has been examined as R.W. 7. His evidence shows that long before the elections he had several enemies which fact is revealed by the certified copies of public documents produced by him. Ex. R-16 dated 5th September, 1956 mentions P.Ws. 29, 32, 33 and 34 among them: and Ex. R-18 dated 4th November 1956 is the original of a complaint against him signed by P.Ws. 16 and 32, P.Ws. 18 and 19, who are Muslims, speak to their having seen Bindhu Madhava Rao introducing the 1st respondent to their Yajaman, Jaleel Sahib and canvassing votes for him. The Yajaman is, as the 1st respondent, swears well known to him, having had occasion to meet him in connection with the earlier election and as he had thereafter occasion to meet him to make representations as a Member of Parliament in connection with a school in which he was interested and that he did not stand in need of an introduction to the Yajaman. Yajaman Jaleel Sahib should have been called by the petitioner to prove the charge, if true. That has not been done. No credence can be given to the testimony of P.Ws. 18 and 19, P.Ws. 20 and 21, both of Krishnagiri for which Assembly constituency Nagaraja Maniagar was a candidate, say that Bindhu Madhava Rao came in the company of the 1st respondent, Nagaraja Maniagar and certain others and asked for their votes for the 1st respondent. They do not speak to their votes having

been canvassed for Nagaraja Maniagar. This story is, on the face of it, incredible. Nagaraja Maniagar was well known in Krishnagiri and was a public worker for a long time. The 1st respondent and Nagaraja Maniagar were jointly working for the election. It is impossible that a request for their votes for the 1st respondent without a request for their votes for the other was made. The evidence of the other witnesses must be discounted on account of their antecedent enmity to Bindhu Madhava Rao. M. N. Subbaraman (P.W. 32) however, requires special mention. He was an Independent candidate for the Krishnagiri Assembly constituency which was contested by Mohanram (P.W. 5) and Nagaraja Maniagar (R.W. 12) who was returned. He filed a petition on 6th March, 1957 before the Returning Officer Krishnagiri constituency (Ex. P-19) stating four grievances in connection with the election, that no identification slip was given to him which omission disabled him from getting admission into the polling stations, that jutkas and bullock-carts were used by the opposing candidates and that a certain teacher worked in the election and that the village Munsif of Kundalapatti also worked in the election. The complaint, however, is only against the candidates that opposed him. The 1st respondent was not one of them and there is no complaint against him; nor is there any complaint against any other Village Officer except the Village Munsif of Kundalapatti or any other government servant except the teacher, if he was a government servant. He was confronted with this in his evidence and his answer was that the other corrupt practices spoken to by him as regards the participation of the Block Development Officer, the karnams Bindhu Madhava Rao, Ranganatha Rao, Dhannoji Rao were not mentioned in it because he had mentioned all those in a petition dated 28th February, 1957 which is prayed to be tacked on with it in Ex. P-19. That petition is said to have been presented to the Tahsildar who is the Assistant Returning Officer. The Personal Assistant to the Collector of Salem who was the Returning Officer for this Parliamentary Constituency was summoned to produce that petition and the reply is that no such petition had been presented (vide index No. 229). The petition is stated to have been presented in person without keeping a copy. We have thus to proceed on the basis that no such petition ever existed. Ex. P-19 gives the lie direct to the various items of corrupt practices spoken to by him. The 1st respondent denies having sought or had any assistance from any government servant or of any village officer. Bindhu Madhava Rao (R.W. 7) also denies having interfered in the elections in any manner.

19. The Block Development Committee is a representative body consisting of members of all political parties. P. N. Kuppuswami Naidu (P.W. 38), a friend of the petitioner, is one of the members of the Committee. There is, therefore, no foundation in the petitioner's suggestion that Nagaraja Maniagar as a member of that committee, has a dominating influence over the Block Development Officer

20. We now come to No. 6, Ranganatha Rao. P.W. 5 speaks to his interference. Before dealing with the evidence of this witness I may, with respect, quote the words of Rajamannar, Chief Justice and Ramachandra Ayyar, Judge in A.A.O. No. 27 of 1958 of the Madras High Court:

> "For one thing, no village officer would have so publicly ventured to canvass support for a particular candidate in the election and secondly no candidate would be prepared to allow such a thing to be done in the manner spoken to by the appellant's witnesses."

These words apply with double force to the evidence adduced on the side of the petitioner in this case to support the case put forward by him. The witnesses swear to the Block Development Officer, with karnams and with both the Parliamentary and Assembly candidates and other persons in position, openly going in procession, street after street and shop after shop and publicly canvassing votes for the candidates. Having set up a conspiracy between all the village officers, Congressmen and certain government servants to commit corrupt practices throughout the constituency in the petition, it is no wonder that he adduced evidence of open canvassing by a gazetted officer and karnams in company with the candidates and others in defiance of authority. Indeed, the petitioner goes to the length of saying that he deliberately did not complain because he apprehended that the complaint would make the matter worse. But the matter, if true, was at the worst, and there was no danger of its being rendered worse. The petitioner depends upon documentary evidence in the forefront of his complaint of participation of the Block Development Officer Venkataramanappa and village officers in para 18 of the petition and reliance is there placed upon Ex. P-19, which has been already dealt with and a petition referred to therein of date 28th February 1957 which, as already stated, never existed. That petition was the

foundation of the tremendous structure of corrupt practices charged in the petition, and the foundation having been demonstrated to be non est, the superstructure is purely imaginary and must be disregarded. The 1st respondent, the concerned karnams and other persons implicated in this open canvass have gone into the box and denied their participation. The complaint of interference of the Block Development Officer and the karnams relates to Krishnagiri. Sarvasri S. R. Narayana Ayyar (R.W. 15) and P. T. Venkatachari (R.W. 6) who are leading lawyers of standing in the place, well known, and having much influence in the locality, swear that there was no interference either of the Block Development Officer or of the karnams as stated in the evidence on behalf of the petitioner and that they did not stand in need of any introduction from a karnam. That was the case with the 1st respondent (R.W.3), Nagaraja Maniagar (R.W.12), Pachayappa Chettiar (R.W. 10), D. S. Subramania Aiyar (R.W. 13) and Dasaratharama Chettiar (R.W. 14).

21. P.W. 5 was a competing candidate for the Krishnagiri Assembly Constituency and was defeated by Nagaraja Maniagar. If any part of his evidence or of the evidence of the petitioner's other witnesses directed to proving corrupt practices be true those practices having been attributed to Nagaraja Maniagar, the returned candidate for the Assembly, as much as, if not more than, the 1st respondent, an election petition to unseat Nagaraja Maniagar would be expected, but none such has admittedly been filed. The petitioner has no individual interest in this election petition, which is meant to assist the 2nd respondent who was an invited guest and had to return disappointed. The parties who invited him and those who supported him including the petitioner and Rao Bahadur Doraiswami Goundar and other leading persons, might have felt it their duty to secure the seat for their guest. This election petition having been filed under these auspices it would appear that those who worked for the 2nd respondent and the combatants at the constituencies defeated by the Congress candidates deem it their duty or privilege to assist the petitioner by adducing evidence in support of the petition. P.W. 5 swore to having seen, distribution of copies of Ex. P-7 at the smasana-kollai festival, long before it saw the light of day (see para. 38 infra). No reliance can be placed on his testimony. I disbelieve the testimony of this and some other witnesses not on account of their party affiliations or their activities in the election campaign which would render them competent, or on acceptance of the maxim *Falsus in uno falsus in omnibus* as a rule of law which it is not but is merely a rule of caution as held by the Supreme Court in *Nisar Ali* V. *State of United Provinces* (1957 Supreme Court Journal, 392 at page 395), but on account of the impossibility improbability or incredibility of their versions in the context. The evidence of P.W. 32 has already been dealt with.

22. No reliance can be placed on the evidence of P.W. 16 and 34 who speak in the same strain as the other witnesses of an open canvassing by the karnams in the company of the 1st respondent and Nagaraja Maniagar, the two Congress candidates.

23. There remains the case of two karnams introduced by amendment in para. 15-B. Para. 11-A of the written statement is the defence so far as this is concerned. The particulars contained in para. 15-B are vague as regards the date of the corrupt practice sought to be charged against the 1st respondent. In the case of these two karnams, Lakshmanier and Rama Rao, the averment is that they canvassed about fifteen days before the election and about twenty days before the election, respectively. This averment is vague and does not satisfy the requirements of section 83(1)(b) of the Act as regards date. Two witnesses, P.Ws. 40 and 41, speak to the interference of Lakshmana Ayyar, karnam of Saparthi in the election. They say that Lakshmanier interfered about twenty days before the election. This does not correspond to the averment. Raja Chettiar (P.W. 42) who speaks about the interference of karnam Rama Rao says that the interference was about twenty days before the election. This, no doubt, corresponds to the averment but does not denote any date for the interference, with the result that in the case of neither of these karnams can an answer be given to the question on what date the karnams interfered. Evidence of this nature would constitute no proof of a corrupt practice in law, one of the three requirements whereof provided for by section 83(1)(b) is, 'particularity about the date of the commission of the corrupt practice.'

24. There is no evidence tendered by the petitioner directed to proving that the activities attributed to the village officers were done "at the instance of the 1st respondent, the Congress candidates to the Assembly and the agents of the 1st respondent." Nor is there any evidence to prove the averment in paragraph 15-A that the manner of canvassing votes was "by threatening the voters not to

vote for the opposite candidates" which is the charge laid. The clarification of the expression "agents of the 1st respondent" used in para 15, given in para. 15-A, is:

> "The agents who worked for the 1st respondent are: (1) The President and Members of the District Congress Committee; (2) President and Members of the Taluk Congress Committee; (3) President and Members of the Town Congress Committees of Krishnagiri Parliamentary Constituency; (4) Presidents and Members of Village Congress Committees; (5) All the Congress Assembly Candidates in the Krishnagiri Parliamentary Constituency mentioned in para. 12 of the petition, the other leading Congressmen who were agents of 1st respondent are shown in the Schedule I herewith appended."

Schedule I contains the names of 24 persons. No evidence is tendered to prove that any of the aforesaid first four body of persons were appointed as agents by the 1st respondent or that they and the 1st respondent conducted themselves in such a way as to lead to the inference of their being agents. The description of Schedule I at the end of para. 15-A would indicate that it is a list of persons apart from those comprised in the five bodies of persons above. But Nos. 1, 2, 5 and 6 are comprised in one or the other of the above bodies. No evidence is tendered to prove that any one except the first had been constituted agents by the 1st respondent or he or any of them conducted themselves in such a way as to lead to the inference of their agency. Evidence is, no doubt, given to show that Nos. 2, 3, 4, 5, 6, 11 and 19 did some work in the election for the 1st respondent. In the case of Nos. 2, 3, 5, 11 and 19, evidence is adduced to show that the 1st respondent accompanied them in his election work. No. 24, Appunu, will be dealt with in considering Ex. P-7. There is no evidence adduced that the remaining persons in Schedule I are even Congressmen though they are styled "leading Congressmen" in para. 15-A—an appellation whose falsity will be demonstrated in the case of Appunu. The petitioner averred a conspiracy in para 15, proof whereof would be sufficient to charge any conspirator with responsibility though he does not personally participate in the act to do which the conspiracy was hatched. No endeavour was made to prove that conspiracy because it became unnecessary in the light of the particulars afterwards furnished which resulted in a change in the scheme of the petition. Whereas as originally designed, every act done could be said to be at the instance of the 1st respondent if alone his participation in the conspiracy is proved, it became now necessary to have his presence in doing every act. The petitioner's pleading would appear to suppose that by the averment that the Congress party sponsored the 1st respondent as a candidate for the Parliament and five other persons as candidates for the five Assembly constituencies, the entire organization became agents of the 1st respondent. In this, the petitioner is wrong. If a political or other body sponsors a candidate for election, that body would not, by that simple circumstance, become the agents of the candidate. They may become the agents if the candidate entrusts the election campaign to them and makes them his agents as happened in the *Eastern* Division of Country of Cork (6 O'M and H. 318). This was the view taken by the Ernakulam Tribunal in *M. M. Manjuran* V. *K. C. Abraham* (10 E.L.R. 376 at 411, et seq.), where the learned chairman and members considered the question as to when associations and their members would be agents of the candidates they sponsor and when not, as also instances where the associations and members were held to be agents and instances where they were held not to be agents. This decision was followed by the Assam High Court in *Viswanath* V. *Harilal* (A.I.R. 1958 Assam 97) at page 106.

25. Paragraphs 15, 15-A, 16, 16-A and 17 to 24 relate to charges of a corrupt practice under Section 123(7)(a) and (f) of the Act. From the above mentioned facts, circumstances and considerations, it is clear that no village officer used his position and/or authority and canvassed votes for the 1st respondent and that there was no such canvassing at the instance of the 1st respondent, the Congress candidates to the Assembly and the agents of the 1st respondent. It follows that the 1st respondent is not guilty of the charge of a corrupt practice under section 100(1)(b) as alleged in paragraphs 15, 15-A, 16, 16-A, and 17 to 24 of the petition. This is my finding on issues 1 and 2.

26. *Issue* 3 reads:

> "Whether Shri R. Appunu was an agent of the 1st respondent and whether he published, at the instance of the 1st respondent, the pamphlet alleged in paragraph 26 of the petition and whether such publication amounts to a corrupt practice under section 123(4) of the Act?"

A charge of a corrupt practice under Section 123(4) of the Act is laid against the 1st respondent in paragraph 26 of the petition, which reads as follows:

> "A corrupt practice under Section 123(4) was committed by the publication of a circular dated 1st March 1957 by one Mr. R. Appunu for the furtherance of the 1st respondent's election. Ten thousand copies of this pamphlet containing spurious and defamatory statements against the personal character and conduct of the second respondent was published in the Parliamentary Constituency and was read by tens of thousands of voters. This was published at the instance of the 1st respondent and his agents and supporters The Publisher of the pamphlet, Mr. R. Appunu was one of the most active agents of the first respondent. A copy of this pamphlet is filed herewith marked Exhibit "A" and this pamphlet made many attacks on the second respondent in relation to his personal character and conduct and described the second respondent as a semi-insane, a fickle minded, undependable and unsteady person, who should not be given a vote by anybody. I state that this publication by one of the agents of the first respondent amounts to a corrupt practice under section 123(4) and this was committed by the first respondent and the above-mentioned Mr. R. Appunu, throughout the Krishnagiri Constituency on and after 1st March 1957"

The 1st respondent's answer to this is contained in paragraph 18 of his written statement, wherein his disclaims all responsibility and knowledge of the matter and adds that the paper bears internal evidence of its being the product of one who, far from being this respondent's agent, must be one quite unconnected with this respondent or even the Congress party. It could even be the work of some one antagonistic to this respondent, inasmuch as it contains false suggestions that the Chief Minister of Madras was against this respondent—a statement which might reasonably be calculated to deflect votes from this respondent." The 8th item of the memorandum presented on 10th September 1957 on behalf of the 1st respondent asks:

> "8. When, where and by whom was the alleged distribution of 10,000 copies of the leaflet Exhibit 'A' referred to in paragraph 26 of the petition carried on?"

and the 9th,

> "Who are the 'agents and supporters' of this respondent referred to in para. 26 of the petition?"

The petitioner supplied these and other particulars and applied, by I.A. No. 1 of 1957, for the amendment of the petition by, *inter alia* incorporation thereof as paragraph 26-A which was allowed by order dated 14th October 1957. Paragraph 26-A is as follows:

> "The distribution of the 10,000 copies of the leaflet issued by Appunu was made from 1st March 1957 to 3rd March 1957 throughout the Krishnagiri Parliamentary constituency, more especially in Dharmapuri, Hosur, Pallacode, Kaveripatnam, Barur and Krishnagiri. The *distribution* was made by the 1st respondent's agents and the Congress workers mentioned in Schedule I. The *publication* of the pamphlet was at the instance of the 1st respondent and his agent Sri S. R. Narayana Iyer and others, whose names are not known."

It will be noticed that in this paragraph a distinction is made between *distribution* and *publication* and that no charge is laid against the 1st respondent as having had any direct and personal part to play in either. Distribution is not at all attributed to him personally; and even in the matter of publication, it is only said that it was done at his instance, the publication being by R. Appunu as mentioned in the opening part of para. 26, though it is stated to be "at the instance of the 1st respondent, S. R. Narayana Iyer and others;" Assuming S. R. Narayana Iyer was an agent, he has no power under the Act and Rules, to authorise another to do an act so as to bind the 1st respondent; 'The words and others whose names are not known' must be struck off for vagueness.

27. A leaflet exhibited to the petition and produced with it marked "Exhibit A", was marked as Ex. P-7 at the trial. It purports to be printed at the Anbu Press, Lee Bazaar, Salem. The proprietor of the Press, V. R. Thangavelu, was called by the petitioner and examined as his 36th witness. In the summons taken out to him by the petitioner he was directed to produce the "order book for printing by Shri R. Appunu the pamphlets of 10,000 copies dated 1st March 1957."

This he did not produce, but he produced carbon copies of his book of bills wherein No 418 was exhibited and marked as Ex P-21, the manuscript stated to have been given by Appunu which was exhibited and marked as Ex P 20, and a printed copy of Ex P 7 which was not filed in Court, Ex P-20 is engrossed on a piece of newsprint folded in the middle and written on the first three pages The matter is concluded at the third page with cramped writing in smaller characters than the body, at the foot In the middle of the 4th page is seen written, in the same ink and apparently in the same hand, "Copies 10,000 Print the matter herein without spelling mistakes" followed by a signature reading "R Appunu" in English All the rest of the writing in the paper is in Tamil, except the initials of Narasimhan with indistinct C or G in two places with R and distinct "G R" and of Appunu, 'R", at the bottom of the third page

28 Thangavelu, who is the compositor, proof-reader, printer and proprietor of his treadle press, says that spelling mistakes in two specified words in the manuscript were corrected, and the nature and size of the types decided, by him in exercise of his powers as a printer He does not speak to any other change that he made A comparison of Exs P-7 and P-20 reveals (a) that the initials of Narasimhan have been made C R throughout, (b) that the name of the author of the pamphlet, which is put in antique type in Ex P 7, is "R " ( ) whereas the name in Ex P-20, is, "R ( ) That cannot be a spelling mistake corrected, (c) There are 3 parts at the foot at the 3rd page of Ex P 20 (1) Place and date on the left is "Krishnagiri taluka 1st March 1957 Jamdarmedu", (2) description in the middle "Congress Abhimani" and (3) name on the right, "Ippakuthi Podu Makkalin Sarbaga R Appunu" In Ex P-7 the structure is entirely different and there are only two parts left and right On the left we find only 'Krishnagiri Taluka, 1st March 1957" Jamdarmedu being transferred to the right with an (e) added after (m) and on the right, below, "R Appunu", "Congress abhimani *Jamedarmedu*" Ex P-20 cannot be the manuscript out of which Ex P-7 was printed The very name of the author is different. The name is the signature and has to spelt as it is There are the other differences above indicated The paper does not show any signs of its having been field with, or pinned to, any other Thangavelu says that the order was placed with him by Appunu in person and it must have been to prove that fact that the petitioner summoned for the order book

29 The writing on the 4th page of Ex-P-20 purports to be an order for printing and the attention of the witness was not drawn thereto which should have been done had it been the order which was executed, If it was not why is it therefor? The matter on the 3 pages and the order on the fourth would appear to have been engrossed at about the same time Thangavelu says that Ex P 20 is in Appunu's handwriting, but does not say whether it was written at his press or whether a ready-made manuscript was brought Appunu is cited as witness No 73 in the petitioner's list of witnesses but has not been called If Ex P-20 is in the handwriting of Appunu, it must have been later devised as a substitute for his examination, which accounts for its non mention in the summons to Thangavelu

30 Appunu would appear to be incapable of drafting the matter of the pamphlet and it is not the petitioner's case that he was its author The petitioner (P W 4) would suggest that a Congress Committee of the area i e, Krishnagiri is the author as appearing from a confession, alleged to have been made to him by Appunu whom he sent for and question on 2-3-1957 after getting information of Ex P-7, that the statements contained therein were false to his knowledge and that he signed it only as a worker for the 1st respondent on behalf of the Congress Committee in that area which drafted it (paragraph 6 of deposition of P W 4) The names of the members of the alleged Congress Committee are not known to the petitioner, nor did he ascertain it In another place the petitioner would suggest that an institution called 'Youth Congress" of which J C Venkatachalapathi Chetti (R W 4), whose lands Appunu is cultivating is President, is responsible for it (*vide* paragraph 25 of deposition of P W 4) Venkatachalapathi Chetty denies the existence of such an association and his connection with any such

31 The petitioner swears "I do not know if Appunu is a member of the Congress" (*vide* para 25 of deposition of P W 4) That Appunu is not a member of the Congress is clear from Ex P-7 itself, where Appunu styles himself a Congress "*abhimani*", which expression is translated as "one who has affection, attachment", in the Tamil Lexicon published under the authority of the University of Madras In the petition, Appunu is described as "one of the most active agents of the 1st respondent" in paragraph 26, and as "a Congress worker" in paragraph 26-A by

reference therein to Schedule I which is a list of persons wherein Appunu is the 24th and the last. In para 15-A (last sentence) persons mentioned in Schedule I are termed leading Congressmen. No justification for characterising Appunu as an "agent of the 1st respondent" or as "congress worker" or as a "leading Congressman" is even sought to be proved on behalf of the petitioner. Ex. P-7 *ex facie* shows that he signs it in his own behalf and not on behalf of anybody else. No attempt is made on behalf of the petitioner to prove the averments in the petition that publication of the pamphlet was at the instance of the 1st respondent. J. C. Venkatachalapathi Chetti, (R.W.4), swears that Jamedar-medu, where he owns the lands cultivated by Appunu and in a hut wherein he resides, and Narimedu, a neighbouring village, are under the influence of Communists. Differences arose between the owners and tillers and the lands in the two villages lay fallow for two years sometime ago whereafter a rapprochment was effected through the intervention of the Collector, and the landlord's share, which was an equal moiety before, was reduced to two out of five.

32. Ex. P-7 affords internal evidence of its being the product of persons antagonistic to the Congress and Congress candidates in the State. It says that Sri Kamaraj Nadar, the leader of the Congress Party in the State of Madras is led by E.V. Ramaswami Naicker, the leader of another political party in the State and that the said two leaders have put up G. D. Naidu as a candidate for the Parliament. This statement aims at several birds at one shot. Sri Kamaraj Nadar is in the State Committee, as also in the Central Committee, of the Congress for selection of candidates for the Assembly and the Parliament. The 1st respondent was recommended by this Committee. Sri Kamaraj Nadar actually came to the constituency on 19-2-1957 and addressed meetings at various places in support of the Congress and Congress candidates including the 1st respondent. Sri Kamaraj Nadar himself was a candidate for election to the Assembly. To say that Sri Kamaraj Nadar was being led by Sri E. V. Ramaswami Naicker is detrimental to his leadership of the party and even to his claims to be a Congressman, because Congress does not work, and is pledged not to work, on communal lines (*vide* para 6, page 27, of Exhibit R-8) whereas the other party is working on those lines. Ex. P-7, which states distinctly that the two leaders are in league to put up G. D. Naidu as a candidate for the Parliament to oppose the "Brahman C. R. Narasimhan" (1st respondent) at once charges Sri Kamaraj Nadar with abandonment of Congress principles and detracts, if it does not pull down, the 1st respondent from his position as a Congress candidate having the support of the Congress and of its leader in the State. No Congressman acting in furtherance of the prospects of the Congress would have had anything to do with a publication like Ex. P-7. The language is filthy and indecent, and no man of position would stoop to participate in it. The first impression that would be created in anybody that reads it would be very much against the author.

33. The question put by the petitioner's counsel to the 1st respondent (R.W.3)—

> "At the time of the election, a section of the Congress, especially the Youth Section, were under the impression that Chief Minister Kamaraj was seeking support from Sri E. V. Ramaswami Naicker and therefore he is not taking any action against him even though he was stating many objectionable matters, and thereby they felt some unpleasantness towards Mr. Kamaraj. Is it correct or not?"

if I may use the expression 'lets the cat out of the bag', as it suggests that Ex. P-7 is the outpouring of malcontents in the youth section of the Congress and is a complaint against Sri Kamaraj Nadar in that he is safeguarding his selfish interest at the sacrifice of his duties to and of the interests of, his party. What a fall in the petitioner's case as regards the atuhorship of Ex. P-7? From the Congress Committee of the Taluk, it came down to Youth Congress, and therefrom it tumbled down and reached *terra firma* in the malcontents among the youth section of the Congress. Except making suggestions, the petitioner has not endeavoured to prove the authorship which, to this day, remains a mystery. It is not necessary to unravel it for the purposes of this case. Suffice it to say that Ex. P-7 is not, and cannot be, a publication made either by or at the instance, or on behalf, of the 1st respondent.

34. Had Ex. P-7 been printed at the instance of the 1st respondent, he should have incurred its cost. The petitioner has no case that the 1st respondent incurred such cost. In the particulars of the sums alleged to have been omitted by the 1st respondent from his account of election expenses catalogued by the petitioner in paragraph 31-A, item 6 refers to the printing in the Hindi Prachar Sabha, Madras. Neither the Anbu Press, Salem nor Ex. P-7 is mentioned therein. Who incurred the cost? Appunu being a tiller of 1½ acres of land of J. C. Venkatachalapathi Chetti and as a resident in a hut in the leasehold, would hardly have met the

cost. It must have been met by some one else who engineered and brought about Ex. P-7. Who that is, is again a mystery and may be left at that as an affirmative solution is not sought to be made out in this case by the petitioner.

DISTRIBUTION

35 When was Ex. P-7 printed, how many copies were struck and when and where were they distributed may next be considered. Counsel for the 1st respondent suggested that Ex P-7 was ante-date and the number of copies, ten thousand, is an exaggeration. The entrustment for print, according to Thangavelu, was at 8.30 in the morning and the work was finished and the printed matter packed and delivered at 9.30 at night. Thangavelu composed the matter and the print was in his treadle machine. Having regard to the size of the leaflet, not more than 12 or 16 copies can be had at one strike. It would appear to me a very difficult, if not impossible, task to have ten thousand copies within the above space of time, assuming every minute of it was utilised. No advance delivery of copies is suggested and the distribution if at all could not have been earlier than the 2nd of March, 1957.

36. The petitioner as his 4th witness states (para 25, page 14) that he met Appunu on the 2nd of March 1957 when he was distributing copies of Ex P-7. This is opposed to his verification of the petition wherein he does not own knowledge in respect of this charge which is stated to be based upon information. The petitioner also states that he has cited witnesses Nos. 21, 23, 24, 26, 29, 30, 31, 34, 37 and 38 in his witness list to prove distribution. Not one of these has however been called. The witnesses speaking to distribution are P.W.4, (the petitioner) 5, 6, 8, 9, 10, 11, 14, 16; 18; 19; 20; 30 and 31. P.W.5; Mohanram; was a competing candidate for the Krishnagiri Assembly seat which was secured by Nagaraja Maniagar, defeating the other three competing candidates, Mohanram (P.W.5), M. N. Subbaraman (P.W.32) and Narayanan, a Dravida Munnetra Kazhagam candidate Mohanram says that he saw the 1st respondent and Appunu distributing copies of Ex P-7 at the river bridge in Kaveripatnam on the Angalamman festival day. On that day the 2nd respondent addressed a meeting at Kaveripatnam which he attended after he got a copy of Ex. P-7 at the bridge. Ex. R-1 is the programme of the tour of the 2nd respondent in the constituency from 25-2-1957 to 1-3-1957, both days inclusive. He was at Kaveripatnam on 28-2-1957. The time of his presence at Kaveripatnam, noted there is however different from that mentioned by Mohanram. It may not be possible, in such cases, to keep to the scheduled timings. The date of the Angalamman festival is the subject matter of controversy in this case.

37. The festival has relation to the deity Parvathi, called Angalamman, in a temple about three-fourth of a mile away from the Kaveripatnam river bridge. The Mahasivaratri is an important function in that temple when there will be poojas throughout the night. It is not disputed that in 1957 the Mahasivaratri was on 27-2-1957. The day next after Sivaratri the idol is taken out of the temple to the bridge at about noon and located there throughout the day. The place of the location was on one bank of the river before, which has been changed to the opposite bank at a place where, from the main road proceeding to the bridge, there is a diversion and at the angle formed by that diversion the deity is located for the last few years. Near that place there is the Travellers' Bungalow and on a side of it the smasanam or cemetery. A huge crowd would collect at that time near, around and under the bridge rendering traffic of vehicles difficult. This function is only on one day and it is only on that day that the crowd collects by the side of the bridge The Angalamman festival is a local holiday at Kaveripatnam. The details of the festival are described by D. S. Subramania Aiyar (R.W.13) whose residence is near the bridge and who does the charity of giving *neer-mor* (butter-milk diluted and mixed with certain ingredients, used as a drink) and *panakam* (sweet drink, especially prepared with jaggery and spices) to the people attending the festival at the bridge and staying there in the scorching heat of the sun. Exs. R-20 and R-21 are the minutes book and attendance register respectively maintained in the Co-operative Town Bank, Kaveripatnam, of which Subramania Aiyar is the President who succeeded Nagaraja Manigar (R.W.12). The genuineness of these books is not questioned on behalf of the petitioner. Ex. R-20 is the minutes book of the Directors' meetings of the Bank. At the meeting held on 31-12-1956, the 7th resolution written at page 72 includes the day of the Angalamman festival among the holidays to be observed by the Bank. In Ex. R-21, the attendance register of the staff of the Bank, the 27th and 28th of February 1957 are marked off as holidays for Sivaratri and Angalamman festival. It is not disputed that the Angalamman festival is also known as Smasang-kollai festival. Exs. R-22 and R-23 are the teachers' and pupils' attendance registers of the District Board High School Kaveripatnam Sri Rangaswami Chettiar (R.W.16), the Headmaster of the

school, proves them. At pages 115 and 117 of Ex. R-22, the 28th of February, 1957 is marked as a local holiday for Angalamman festival. In Ex. R-23 also the 28th of February 1957 is marked as a local holiday for that festival.

38. Confronted with this situation, that Ex. P-7 whose print was finished only on the night of the 1st of March 1957 whereas the Angalamman festival was the previous day, an attempt to reconcile the petitioner's evidence that copies of Ex. P-7 were distributed at Kaveripatnam on the day of the Angalamman festival was made on behalf of the petitioner by indicating that the festival runs on for two or three days starting from Sivaratri. A question was asked of Rangaswami Chettiar (R.W.16) by the petitioner's counsel in cross-examination, as follows—

> "At Kaveripatnam, during Sivaratri period, at Angalamman temple, there would be festival for two or three days continuously, starting with Sivaratri day."

which elicited the following answer:—

> "The festival goes on for two or three days; the important one is only on one day, when there will be a crowd; on other days there would be only formal poojas inside the temple. The important day is Angalamman day. On that day the deity is taken outside the temple in procession and there will be a large crowd."

Another suggestion was made in the cross-examination of R.W.10 (A.V. Pachayappa Chettiar), President, Panchayat Board, Kaveripatnam, who porved in chief examination that Sivaratri was on the 27th and Smasana-kollai on the 28th, of February, that the smasana-kollai was on Saturday, i.e., 2nd March, 1957, the weekly shandy day at Kaveripatnam, and not on Thursday the 28th of February. The witness denied the suggestion and replied that the function was on Thursday. In cross-examining the 1st respondent (R.W.3) who denied in chief examination his having been present at Kaveripatnam on the smasana-kollai day or on any of the days from the 28th of February onwards, the suggestion was put forward that the festival goes on for four or five days. These are desperate attempts made on behalf of the petitioner to resuscitate the utterly false evidence adduced on his side that copies of Ex. P-7 were distributed at Kaveripatnam on the smasana-kollai day That very evidence shows that it is a one-day festival, whichever be the day. It transpires that that was the 28th of February when Ex. P-7 had yet to see the light of day which it did, if at all, only on the 2nd of March, 1957. Mohanram is definite that on his way to attend the meeting addressed by the 2nd respondent he received a copy of Ex. P-7 at the Kaveripatnam bridge when there was a crowd collected which made it difficult for the 1st respondent's car to pass which had therefore to be stopped and advantage was taken of that stopping to distribute copies of Ex. P-7 by Appunu who got down from the car and threw copies over the bridge to be picked up by those below on the sands, and the 1st respondent himself distributed from his seat in the car. He had a copy with him when he went to the meeting addressed by the 2nd respondent which was attended by the petitioner. That meeting was surely on the 26th February. The story of the distribution of copies by the 1st respondent is ruled out by the pleading The 1st respondent denies it in his evidence. The presence of the 1st respondent in Kaveripatnam on the 28th of February or on the 1st or 2nd of March is denied by him. That evidence is confirmed by that of D. S. Subramania Aiyar (R. W. 13). Indeed, the petitioner has no case that distribution by the 1st respondent and R. Appunu at Kaveripatnam happened on any day other than the Angalamman festival day. The 1st respondent (R.W.3) denies that he knew or was in any way acquainted, or had anything to do, with, R. Appunu, and the petitioner has not been able to prove the contrary.

39. The evidence of P.W.6 (P. K. Ramamurti) is that copies of Ex. P-7 were distributed at Ponnagaram, which is not one of the places where the distribution is alleged to have been made in para 26-A, nor is Dowlatabad, wherein Govinda Rao (P.W.16) says copies of Ex. P-7 were distributed; and Sri Ramulu, an alleged distributor, is not one of the persons mentioned in Schedule I the persons wherein, para 26-A states, made the distribution. No other witness, except Venugopal (P.W.8) who speaks to have seen the distribution of copies of Ex. P-7, connects the 1st respondent either directly or indirectly with the distribution. Venugopal said in examination in chief that the 1st respondent came in a car to Dharmapuri and certain Congress volunteers got down from it and distributed copies of Ex. P-7. No date was mentioned. In cross examination he admits inability to give the precise date but says that it was in day time two or three days before the election. The election was on 4-3-1957 and if it was 2 or 3 days before, it must be on the 1st of March or 28th of February, and copies of Ex. P-7 were delivered by the printer only at 9-30 P.M. on 1-3-1957. It is significant that not one of the ten

witnesses specifically cited by the petitioner to prove distribution of copies of Ex. P-7 is called to prove it. But other witnesses, who were cited to prove other matters, speak to distribution. It is impossible to believe the story that the publication or distribution was by or at the instance, or on behalf of, the 1st respondent.

40. There are imputations in Ex. P-7 relating to the personal character of the 2nd respondent. It would, however, be a corrupt practice under Section 123(4) of the Act only if the publication be by a candidate or his agent and which he either believes to be false or does not believe to be true. In this case the publication has not been proved to be by the candidate or his agent; nor is there proof that it was false to the knowledge of the candidate or his agent. Upon the evidence it has to be found that the candidate, *viz.*, the 1st respondent, never knew about it. Appunu has not been proved to be his agent and his confession to the petitioner spoken to by him, if true, cannot bind anybody except its maker. The confession would, however, indicate that the author of the publication is not Appunu who is merely a signatory at the instance of some persons whose names are unknown. The publication would in that case be by those unknown persons and not by the puppet in the shape of Appunu which he admits to be, and there is nothing to show that the alleged authors either knew the imputations to be false or did not believe them to be true. The 2nd respondent is an industrialist and he addressed many meetings in his hurricane tour of the constituency, from the 25th of February inclusive of the 1st of March, when the petitioner was with him. If Ex. P-7 was printed on the 1st March hurriedly and distributed on the 2nd or 3rd of March, it must be by those inimical to the 1st respondent and interested in the prospects of the 2nd respondent in the election, on discovery, in the course of the tour, that the chances for the 2nd respondent were not bright, and the device of discrediting the 1st respondent was invented in the shape of Ex. P-7 which contains imputations against the 2nd respondent, so obviously undeserved. The 2nd respondent must have made an impression about himself in the constituency and when someone purporting to support the Congress publishes imputations against the 2nd respondent, it will be little the Congress in the view of the public, besides bringing about an adverse effect on the Congress candidate by the insidious suggestion that the Congress leader, Sri Kamaraj Nadar, was opposed to him. The way in which copies of Ex. P-7 are alleged to have been distributed on the Anagalamman festival day is not, the one that seasoned public workers as Congressmen, and persons conversant with elections like the 1st respondent and Nagaraj Maniagar, would resort to. The suggestion of Pandit Nana Chand in his book On Law and Practice of Elections and Election Petitions (1937 edn.) at page 36-37, that "care, however, should be taken not to distribute pamphlets and circulars in such abundance that they may be treated as waste papers. Judicious distribution of pamphlets and circulars is therefore suggested," full of commonsense and practical prudence, would not have been foreign to, or have fallen flat upon, the 1st respondent and his supporters. What value would one attach to leaflets thrown from over a bridge to be taken care of by the winds, with the chance of their reaching those down the bridge on the sands, a motley crowd collected there to see the festivities. Not one of the recipients of copies examined in the case ever cared to keep and produce it in Court. It is interesting to note that even the petitioner does not disclose the source wherefrom he got the copy produced by him with the petition, though one of the witnesses examined by the petitioner says that he gave a copy to the petitioner.

41. My finding upon the 3rd issue is that R. Appunu was not an agent of the 1st respondent, that Ex. P-7, the pamphlet alleged in paragraph 26 of the petition; that it was not published at his instance and that the 1st respondent is not guilty of a corrupt practice under Section 123(4) of the Act on account of the publication of Ex. P-7.

42. *Issue* 4.—Paragraph 27 lays a charge against the 1st respondent of a corrupt practice under section 123(4) in that a publication in the "Tamil Nadu" dated 4-2-1957, a Tamil daily published from Madurai stating that the 2nd respondent had withdrawn his candidature from this constituency, was made at his instance. A copy of the issue of that daily dated 4-2-1957 contains at page 2 the notification complained of dated 2-2-1957 marked Ex. P-8. Sri T. A. V. Nathan (P.W.3), the Editor of the daily, swears that the news item, Ex. P-8, was based on information dated 2-2-1957 from their correspondent at 'Koval' i.e., Coimbatore. The news item states that it is based on personal information gathered by the correspondent. No evidence is adduced to prove the charge made in the petition that the notification was made at the instance of the 1st respondent or at the instance of anybody whose act would bind him. There is no evidence to prove that the correspondent believed the information to be false or did not believe it to be true.

43. My finding on issue 4 therefore is that it has not been proved taht the publication in the "Tamil Nadu" dated 4-2-1957 regarding the withdrawal of the 2nd respondent of his candidature was made at the instance of the 1st respondent and that the said publication does not amount to a corrupt practice under section 123 (4) of the Act.

44. *Issue* 5.—Relates to the averment in para 28 of the petition to the effect that the 1st respondent in the third week of February, 1957 went to N. C. Dharmalingam son of A Chithangattha Chettiar and told him that the 2nd respondent was not standing for election and that he need not work for the 2nd respondent. The petitioner examined Dharmalingam as his 7th witness (P.W.7). He says that the 1st respondent met him in the last week of February and told him that the 2nd respondent had withdrawn his candidature and that he may, therefore, work for him (1st respondent). He does not say that the 1st respondent met him at any time in the third week of February. The charge itself is vague in not indicating the date of the alleged commission of the corrupt practice and the charge, vague as it is, has not been proved. The 1st respondent as R.W.3 denies having met P.W.7 at any time and told him that the 2nd respondent had withdrawn.

45. Upon issue 5 I hold that the 1st respondent did not tell N. C. Dharamalingam of Nagarasampatti (P.W.7) in the third week of February 1957 that the 2nd respondent was not standing for election and that he need not work for him and that the 1st respondent is not guilty of the charge of corrupt practice under section 123(4) of the Act.

46. *Issue* 6.—The subject-matter of this issue has been dealt with already in paragraph 14 *supra*. My finding is that Desai Venkatakrishnan did not write to the karnam of Bandepalli that he should secure votes for the 1st respondent, that he did not send any printed appeal to him with his endorsement either of his own accord or at the instance of the 1st respondent or with his connivance, knowledge and consent.

47. *Issue* 7.—Paragraph 30 lays a charge of bribery under Section 123(1) of the Act against the 1st respondent in that he promised Sri Subramania Goundar, President of the Agaram Panchayat, that he would give Rs. 1500 for the construction of a common well and for repairing the village temple if the voters in the village voted for him in preference to other candidates. Sri Subramania Goundar mentioned in this charge is cited as witness No. 33 in the list of witnesses filed by the petitioner, but he was not called. The petitioner (P.W. 4, para 8) says that Shri Subramania Goundar told him as alleged in paragraph 30. This is not evidence, but hearsay. My finding on issue 7 is that the charge has not been proved.

48. *Issue* 9.—This relates to a charge laid against 1st respondent in paragraph 32 of the petition in that he and his Brahmin agents made a systematic appeal to the Brahmin voters that they should vote for the Brahmin candidate. The petitioner alone speaks to this charge. He admits (P.W. 4, page 12, para 22) that he was not present when the campaign was carried on and that two Brahmin friends of his informed him about it. Those Brahmin friends have not been called. The statement of the petitioner, is not evidence but mere hearsay. The petitioner says that those two Brahmin friends voted for the 2nd respondent. He says that there are only 7,500 Brahmin voters spread throughout the constituency. It would be attributing folly to the 1st respondent to say that in a constituency consisting of three and a half lakhs of voters he thinks fit, as a Brahmin, to canvass on communal lines, asking Brahmins to vote for the Brahmin candidate—a step suicidal to his cause. The 1st respondent denies the charge. The charge itself is absolutely vague. None of the particulars required by section 83(2) as regards the person, date or place of the corrupt practice is given in the petition. The petitioner concludes the paragraph laying the charge with the sentence:

> "It is impossible to give the names of persons who are parties as almost every Brahmin in the Constituency was a party to it."

Particulars were asked for and were supplied and sub-para 32-A has been added to the petition. That sub-para does not render the position any the better as it says regarding persons that some of the names of the Brahmin agents are given in Schedule III, that whispering and systematic appeal was during the last week of February, 1957 and from 1st to 3rd March, 1957, and the places are mentioned as Dharmapuri, Papparapatti, Pappinaickenpatti, Krishnagiri, Perumbalai and Hosur all alike vague except perhaps, the places. Paras 32 and 32-A (which is by mistake numbered as 33-A) containing the charge have to be struck off for vagueness.

49. My finding on the issue is that it has not been proved that the 1st respondent made a systematic appeal on communal lines as alleged in para 32. I find that the 1st respondent is not guilty of the corrupt practice under section 123(3) and his election is not liable to be set aside under section 100(1)(b) of the Act for the that reason.

50. *Issue* 10.—This issue relates to the charge laid in paras 14, 33 and 34 of the petition. Paragraph 14 avers that out of the 4000 and odd officers employed in the booths on election date, about 3000 were persons who had votes in this constituency and that they could no exercise their franchise on account of the violation of the provisions of rule 44 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1956. Details of this charge are given in para 33 in that the election personnel were not given their orders of appointment in time to enable them to apply for postal ballot papers. Rule 44(1) provides for an application for a postal ballot paper and clause (2) stipulates that that application shall be made at least seven days, or such less period as the Returning Officer may in any particular cases allow, before the date or the first of the dates fixed for the poll. The only evidence on this issue is Ex. P-14 which is a list agreed to by both sides, of polling personnel who received their orders of appointment on or after 25th February 1957, i.e., within a week of the date of the poll. The fact that the orders of appointment were received within a week of the date for the poll does not, by itself, amount to non-compliance with any rules within the meaning of section 100(1)(d)(iv) of the Act, as rule 44 does not prescribe seven days as a period that should necessarily elapse between the application and the date fixed for the poll as it gives power to the returning officer to permit the application to be made with an interval of such less period as he may in any particular case allow. If the polling personnel who got their orders of appointment within a week were so minded they could have applied for and obtained their postal ballot papers It is said that 41 of them did apply and that their applications were rejected as "too late". Assuming this to be true, the consequence is only that 41 electors could not exercise their franchise. As regards the remaining 1677 persons, there is nothing to show and it is not even suggested that they applied for postal ballot papers and that they were denied the same or that the places to which they were posted were such that they could not have recorded their votes in person at the appropriate polling stations. It cannot be said that the issue of orders of appointment within a week of the date of the poll to 1718 polling personnel is a violation of the rules or that it materially affected the result of the election so far as the returned candidate is concerned within the meaning of section 100(1)(d)(iv) of the Act.

51. The statement in para 33:—

> "that the persons employed in various polling booths and who were denied facilities for casting their votes were mostly non-gazetted officers and District Board teachers, who were discontented thoroughly with the Congress Government and who would not certainly have cast their votes in favour of Congress candidates. It is apparently on account of this fact that facilities were not given to them to cast their votes. If they cast their votes, the second respondent would have got a majority of those votes".

is made with an idea to discredit the Congress Government which appears in other portions of the petition as well (*vide* paragraphs 15 and 16). No attempt has been made by the petitioner to prove it. It would seem as though the petitioner is content with publishing those charges.

52. Para 34 states that all "army personnels" were also not supplied with ballot papers which also amounted to non-compliance with the rules. No evidence has been adduced upon this charge.

53. My finding on issue 10 is that it has not been proved that the provisions of rule 44 were not complied with as alleged in paragraphs 14, 33 and 34 and that the result of the election has not been materially affected for non-compliance with the rules and that the election of the 1st respondent is not liable to be declared void under section 100(1)(d)(iv) of the Act.

54. *Issue* 11.—This relates to the alleged late opening of both No. 40 in Krishnagiri. Para 35 of the petition avers that polling booth No. 40 at Krishnagiri was opened only at 8 a.m. whereas it should have been opened at 7 a.m. and as a consequence a large number of ladies who came to the booth in the morning had to return without casting their votes and they did not come back for voting, and this has materially affected the result of the election. M. N. Subramaman (P.W. 32) swears that polling booth No. 40 was opened an hour later than the due time and that he saw 20 or 25 women voters who came there before 8 a.m. but returned without recording their votes as the booth was

not open and that his request for keeping the booth open for an hour later than the time originally fixed for closing was turned down by the polling officer. The last part of the testimony is not a part of the charge, nor does the witness say that any voters who came after 4 p.m. could not vote. The rule is that all voters who are present at the polling station before the time fixed for closing would be allowed to vote, however long it might take them to record their votes. The result of the late opening of this polling booth is at the worst only the disability for 20 or 25 voters to exercise their franchise. There is nothing to show for whom they would have cast their votes. Assuming all those would have voted for the 2nd respondent, the 1st respondent would retain his lead over the 2nd respondent as the difference is 367 votes

55. The petitioner as P W. 4 says that booth No. 40 was opened only at 8 a.m. and that many Muslim ladies came before 8 a m and returned without voting and that they did not come afterwards. In cross-examination he admits that he has no personal knowledge about it and that M. N. Subbaraman (P.W. 32) gave him the information at 10 a.m. on the polling day. Unless M. N. Subbaraman gave him a version different from what he has said in his deposition, the statement of the petitioner that "many Muslim ladies" came and returned without voting before 8 a.m. is an unjustified exaggeration; and the statement that they did not come afterwards is not a fact sworn to by M. N. Subbaraman, and Subbaraman's statement could only relate to the time before 10 a.m. when he talked to the petitioner. There is nothing to show that those who returned did not turn up later in the day.

56. My finding in issue 11 therefore is that even accepting the testimony of P.W. 32 regarding the late opening of polling booth No. 40 and holding that there was a violation of rule 35, that violation has not materially affected the result of the election so far as the returned candidate the 1st respondent is concerned.

57. *Issue* 16: Para 37 of the petition relates to this issue. That para avers that Ramachandra Chetti and about five members of his family who were voters were at Bangalore on the election date in connection with the marriage of the brother of Ramachandra Chetti of Kaveripatnam and that they did not vote but their votes were recorded. "They are not Congress supporters. The petitioner states that these voters, if they were present, would have voted for the second respondent." In the written statement para 26 there is no definite denial of this averment but there is only a statement that the situation complained of was not brought about by the 1st respondent. The petitioner has no case that the 1st respondent was a party to the false personation complained of. Ramachandra Chetti is examined as P.W. 39. He swears that he went to Bangalore on 3rd March, 1957 in connection with the marriage of his brother A. C. Krishnan Chetti, along with his brother, mother and wife and that they returned only on 8th March, 1957. He proves Ex. P-22 which is a copy of the printed invitation for the marriage of his brother, which shows that the upanayanam of the bridegroom which, in their community, is performed on the day of and preparatory to, the marriage, was at 9 a.m. and that the marriage itself was at 12 noon on 4th March, 1957. P. N. Kuppuswami Naidu (P.W. 38) swears that he was at Bangalore as in-patient in a hospital early in March 1957, that Ramachandra Chetti who was his friend went to the hospital on the 23rd March to invite him for the marriage and that he agreed to attened the function but could not do so as the Doctor who was attending on him did not permit him to leave the hospital. He further swears that after the marriage Ramachandra Chetti again met him in the evening to complain about his absence at the marriage and told him that the marriage went off well, when he explained the reason for his inability to attend. P.W. 4 (Page 8 para. 14) says that "the votes of Ramachandra Chetti and members of his family who were in Bangalore at the time of polling are seen recorded in Kaveripatnam on that day." He has not been cross-examined on this point. I believe the evidence mentioned above and find that four votes, *viz.*, those of Ramachandra Chetti, his brother, wife and mother, were recorded when they were away at Bangalore by false personation as alleged in para 37 of the petition.

58. *Issue No.* 17: Para 29 of the petition relates to this issue. That paragraphs avers that the 1st respondent and his agents had committed a corrupt practice under section 123(5) of the Act by hiring and procuring vehicles for the conveyance of electors to and from the polling stations on the date of the election, *viz.*, 4th March, 1957. Once of the contesting non-Congress candidates Shri M. N. Subbaraman, in the Krishnagiri Assembly constituency brought to the notice of the polling officer this

corrupt practice committed by the Congress candidates including the first respondent on the date of polling. This corrupt practice was committed by the first respondent and his agents in all polling booths and particularly in Booth No. 40 on 4th March, 1957. Particulars of this charge were asked for and supplied in the shape of sub-para 29-A to para 29 which was incorported in the petition by order dated 14th October, 1957 on I.A. No. 1 of 1957. In para 29-A it is stated that the 1st respondent and his election agent Shri S. R. Narayana Ayyar hired Jutkas. The 1st respondent had no election agent. His counsel said so in the counter statement to I.A. No. 4 of 1957 filed by the petitioner for amendment of certain issues. In that connection the 1st respondent who was present stated in open court that he had no election agent and that he would file an affidavit to that effect. An affidavit was accordingly filed (index No. 126). It is recorded in the order on I.A. No. 4 of 1957 dated 16th December, 1957, the day on which the examination of witnesses started, that the petitioner accept the position that the 1st respondent had no election agent. The description of S. R. Narayana Ayyar as "election agent" in para 29-A must, under these circumstances, be deemed to have been deleted. Even in the particulars supplied the place of the commission of the alleged corrupt practice is not indicated. No date is mentioned in para 29-A perhaps because the date was indicated already in para 29 and that date is 4th March, 1957. The evidence adduced in the case as to the alleged hiring of vehicles is that furnished by Basu and Absa (P.Ws. 22 and 23). They say that a messenger from S. R. Narayana Ayyar came to them to the Jutka stand and that they went to S. R. Narayana Ayyar between 6 and 7 p.m. on the 2nd of March 1957, that S. R. Narayana Ayyar arranged with them for ten Jutkas for use on the 4th March at Rs. 10/- per Jutka for the day besides mid-day meals, that this happened on the verandah of Narayana Ayyar's house and that the 1st respondent was present inside. The petitioner made the averment in the petition, as the verification shows, on information. Basu says in cross-examination that the petitioner sent for him from Rao Bahadur Doraiswami Goundar's house and asked him whether he plied Jutkas in the election for the Congress and he said 'Yes'. The petitioner then said that should need be, he would be cited as a witness. This is all the conversation that there was between them and the only information that the petitioner had of him. Basu adds later in cross-examination: that the fact that Narayana Ayyar sent for him, arranged Jutkas with him, and that money was paid, he was mentioning for the first time in Court. Absa (P.W. 23) states in cross-examination: "I told no body about the hiring of my Jutka. I am stating it here for the first time." Basu says that besides himself, Absa, S. R. Narayana Ayyar and the 1st respondent nobody else was present when Jutkas were arranged. How then could the petitioner make the averments in para 29 and give particulars in para 29-A is the question. The answer is given by the petitioner (P.W. 4, page 6 para 7) that M. N. Subbaraman (P.W. 32) was his informant. This is in a way indicated in para 29 itself which refers to the complaint in that regard made by Subbaraman to the polling officer on the date of the polling. Ex. P-18 is produced in proof of that complaint. Ex. P-18 is stated to contain the initial of the polling officer at the top. That officer has not been called to prove the initial. It does not purport to be a copy which it is stated to be. If it is a copy, its original has not been called for. It only states that the Congressmen and Mohanram party are bringing voters in Jutkas from ward Nos. 12 and 13. There is no reference to the 1st respondent in this or to the Congress Assembly candidate. Even assuming accepting the oral information and Ex. P-18 at face value, they could not constitute the foundation for the charge in paragraph 29 as no mention is therein made of hiring by S. R. Narayana Aiyar or the 1st respondent. The charge is that voters were taken to polling booth No. 40. There is nothing in the evidence of P.Ws. 22 to 27 who are Jutkamen, or P.W. 32, to show that any Jutkas plied taking voters to booth No. 40 at the instance of or on behalf of the 1st respondent. Shri S. R. Narayana Ayyar (R.W. 15) swears that he was not in his house in the evening of the 2nd of March and that he was away at Barur canvassing for the 1st respondent, that he left his house at 10 or 11 in the morning and returned only at 10 or 11 in the night and that he did not arrange Jutkas with Basu for hire. The 1st respondent swears that he was away with Shri P. T. Venkatachari (R.W. 6) in the Hosur area, having left Krishnagiri before noon and returned to that place only late at night, at 10·30 or 11. Shri P. T. Venkatachari as R.W. 6 corroborates this testimony. I have no hesitation to hold, believing the evidence of the 1st respondent, Shri S. R. Narayana Ayyar and Shri P. T. Venkatachari, that neither Naryana Ayyar nor the 1st respondent was present in Narayana Ayyar's house between 6 and 7 p.m. on 2nd March 1957 when the arrangements for hiring of Jutkas is said to have been made by Narayana Ayyar with Basu (P.W. 22). Hiring of conveyances besides being a corrupt practice under section 123(5), is an electoral offence under section 133 of the Act. Shri Narayana Ayyar as a leading lawyer is hardly likely to make himself guilty of such an offence. The charge is that illegal hiring of vehicles was done on

the 4th March. The evidence tendered by P.Ws. 22 and 23 is that it was on the 2nd March, *i.e.*, there is no evidence tendered to prove the charge as laid. My finding on issue 17 is that the 1st respondent did not hire Jutkas for the purpose of taking voters to and from any polling booth.

59. *Issue* 15—This issue raises the question whether the election petition is liable to be dismissed under Section 90 (3) for non-compliance with the provisions of Section 83 of the Act and should have been considered first had the plea been put forward seriously and its consideration preliminarily prayed for. The Election Tribunal is a creation of the Representation of the People Act, 1951, and its jurisdiction arises from, and is limited by, the provisions of that statute. The Election Commission, which is an independent body brought into existence under Art. 324 of the Constitution, is invested with powers to receive election petitions and if they are not dismissed by the Commission under Section 85, to refer them for trail to election tribunals under section 86 of the Act. The Tribunal's jurisdiction, on receipt of an election petition, is only to dismiss it under section 90(3) if it does not comply with the provisions of sections 81, 82 or 117 of the Act. The question whether an election petition is liable to be dismissed under Section 90(3) is one to be considered before entering on trail, because if the petition is liable to be dismissed *in limine*, the Tribunal has no jurisdiction to try it. This absence of jurisdiction to try cannot be cured by acquiescence, nor can it be conferred even by consent of the parties, as the absence of jurisdiction is inherent in its constitution. Non-compliance with other mandatory provisions of the Act may also be said to affect the Tribunal's jurisdiction, but it is jurisdiction appertaining to the trial, *i.e.*, the procedure at the trial, the sufficiency of pleadings and so on, which is curable by acquiescence or conferable by consent, as the provisions in that regard are made for the benefit of the parties in the matter of the actual conduct of the case to avoid embarrassment and surprise. Non-compliance with such mandatory provisions will not entail dismissal of the petition. In *Jagan Nath* V. *Jaswant Singh* (A.I.R. 1954 Supreme Court 210) their Lordships say, referring to the word "shall" in section 82 of the old Act relating to joinder of parties, that "it is one of the rules of construction that a provision like this is not mandatory unless non-compliance with it is made penal" (page 214, col. 1) and they proceed to state later in the judgment as follows:

> "From the circumstance that Section 82 does not find a place in the provisions of section 85, the conclusion follows that the directions contained in section 82 were not considered to be of such a character as to involve the dismissal of a petition *in limine* and that the matter was such as could be dealt with by the Tribunal under the provisions of the Code of Civil Procedure specifically made applicable to the trial of election petitions." (page 214, col. 2).

Under the old Act non-compliance with three section, 81, 83 and 117, entailed dismissal of a petition *in limine*. Under the Act the three sections non-compliance with those provisions is to be visited with the consequence of a dismissal *in limine* are sections 81, 82 and 117, substituting section 82 for section 83 in the old Act.

60 Order I rule 10(2) of the Code of Civil Procedure provides that

> "the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out****" (the remaining portion of the sub-clause is unnecessary in the context).

In *Abdul Sac* V. *Sundara Mudaliyar* [I.L.R. 54 Madras 81 (F.B.), A.I.R. 1930 Madras 913] and in *Malyam Patel* V. *Lakka Narayana* (A.I.R. 1931 Madras 284) it was held that "where no cause of action is mentioned against a party to a suit and no relief is claimed against him, it will be improper and unnecessary to retain him and he may be struck off from the suit." Section 90(1) of the Act makes the Code of Civil Procedure applicable to the trial of election petitions subject to the provisions of the Act. In *Mallappa Basappa* V. *Basayaraj Ayyappa* (A.I.R. 1958 Supreme Court 698) their Lordships have considered the extent of the applicability of the Code of Civil Procedure to election petitions and they observe that the application of the Code is for the trail of petitions and therefore Order 23 rule 1, C.P.C., relating to withdrawal will not apply so as to deprive the respondents of the right to recrimination that accrued to them under the Act on the presentation of the election petition, that is, before the commencement of the trial.

61. The contention of the learned counsel for the 1st respondent is that the impleading of the 5th respondent as a party renders the petition liable to be dismissed for non-compliance with section 82 of the Act. Clause (a) of section 82

enjoins the impleading of all contesting candidates in a case where the petition, besides claiming a declaration that the election of a returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, which is the case here. All contesting candidates have therefore necessarily to be impleaded and if one or more be omitted, the omission entails dismissal of the petition *in limine* (See *K. Kamaraj Nadar* V. *Kunju Thevar*, A.I.R. 1958 Supreme Court 687). The objection here is not that any contesting candidate has been omitted to be impleaded. There were only four contesting candidates and they are respondents 1 to 4. The 5th respondent withdrew under section 37 of the Act and was not, therefore, a contesting candidate under Section 38. Clause (b) of Section 82 enjoins impleading of any other candidate against whom allegations of any corrupt practice are made in the petition. There is no allegation of any corrupt practice made against the 5th respondent who is a candidate within the meaning of section 79(b), though not a contesting candidate. Had a charge of any corrupt practice been made against him, he would have been a necessary party. In his examination the petitioner (P.W. 4) (page 7 para 10) includes the name of the 5th respondent as one of the persons reported to have been party to a corrupt practice under Section 123(3) of the Act. That statement is, however, hearsay and not evidence and even were it evidence, it will not necessitate the impleading of the 5th respondent, as such necessity would arise only if a charge of corrupt practice is made against him *in the petition*, which has not been.

62. The question is whether section 82 not merely enjoins that particular persons should be impleaded, but prohibits the impleading of any other. The contention urged on behalf of the 1st respondent is that section 82 contains such a prohibition by implication. Reliance is placed on section 90(4) of the Act which provides for the impleading of a candidate as a respondent on his application which should be made within fourteen days of the commencement of trail, that is to say, the day, which in the Explanation to that sub-clause has been stated to be the date, fixed for the respondents to appear before the Tribunal, and subject to the provisions of section 119 which provides for his giving such security for costs as the Tribunal may direct. It is argued that the bringing in of a candidate whose impleading is not necessary under section 82 would be enabling him to escape the liability to furnish security under section 119 of the Act. What a candidate can do on being impleaded as a party after trial commences is only to give notice of recrimination under section 97 which he can do only on condition of his furnishing security under section 117 or further security if so ordered under section 118, which is obligatory, unlike the security under section 119, the furnishing of which is left to the discretion of the Tribunal to direct or not to direct. An election petition being in the interests of the entire constituency, it cannot be said that any elector cannot be made a party to the petition. The election petition is a representative proceeding in which the entire constituency is interested and by the decision wherein the entire constituency would be bound, and every elector would, in that sense, be deemed to be a party, though not *co nomine* on record. The Supreme Court in *Mallappa Basappa* V. *Basavaraj Ayyappa* extracted the following passage from their judgment in *Kamaraj Nadar V. Kunju Thevar* (A.I.R. 1958 Supreme Court 687).

> "An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power."
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> * * * * * * * * ..
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> "An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The Public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process."
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> "An election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested."

and added:

> "Vide *Jagan Nath* V. *Jaswant Singh*, 1954 S.G.R. 892 at page 895: (A.I.R. 1954 Supreme Court 210 at page 212(B); *A. Srinivasan* V. *Election Tribunal, Madras*, (1955) 11 E.L.R. 278 at page 293(C); *The Tipprary Case*, (1875) 3 O'M and H. 19 at page 23(D)".

In the said *A. Srinivasan's* case Mr. Justice Balakrishna Aiyar of the Madras High Court said:

> "An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. The citizens at large have an interest in seeing, and they are justified in insisting, that all elections are fair and free and not vitiated by corrupt or illegal practices." (page 293).

And in The *Tipperary Case* Mr. Justice Morris said:

> ".. .a petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested....." (page 25)

63. The impleading of parties whose presence is not necessary is not prohibited by law, but unnecessary parties inpleaded can be struck off the array by the Court under the provisions of Order I rule 15 of the Code of Civil Procedure. In my view, the impleading of the 5th respondent is not fatal to the petition, that such impleading does not render the petition one which does not comply with the provisions of section 32 of the Act liable to be dismissed under section 90(3) of the Act. As I find that the 5th respondent is an unnecessary party, I direct that his name be struck off.

64 The issue asks: "Is the petition or any relief claimed in it liable to be dismissed....." If a plea under Section 90(3) of the Act succeeds it entails dismissal of the petition *in toto* and prohibits trial altogether. Section 90(3) would not operate partially on some relief or issue alone so as to mould its decision in the final order of the Tribunal under Section 98 of the Act. Section 90(3) does not contemplate a petition good in part and bad in part.

65. *Issue* 12.—The consideration of this issue places me in a somewhat embarrassing situation. The High Court in the order on W. P. Nos. 182 and 183 of 1958 directed me to confine myself to the 140 names enumerated in Exhibit B to the petition, quashing my orders in I.A.Nos. 2 and 4 of 1958. It was on a consideration of a question of jurisdiction of the Tribunal that the High Court passed the said order. In the arguments in I.A.Nos. 2 and 4 of 1958, the matter was not presented before me as a question affecting the Tribunal's jurisdiction as was done before the High Court. The point debated before me was merely factual and related to the construction of para 36 of the petition which reads:

> "the petitioner states that a large number of votes in the names of dead persons were cast by persons who personated them and they were cast in favour of the first respondent. Out of these large number of votes, the petitioner files herewith a list marked exhibit B of a few voters (sic) cast in the names of dead persons. This also materially affected the result of the election".

The question was whether the wide language of the first sentence should be limited by the second sentence referring to Exhibit "B" containing the 140 names and the third sentence considered not having reference to the averments in that para alone but certain other paras as well, or whether the first sentence should be independently considered with the consequence mentioned in the third sentence and the second taken as being merely referring to some of the instances. My order on I.A. No. 2 of 1958 makes this position clear. The question of jurisdiction persented before the High Court was that the first sentence in para 36 not having mentioned the names of the deceased voters who e votes are alleged to have been recorded by personation, does not comply with the requirements of Section 83(1) (a) of the Act as regards "statement of material facts" enjoined therein and does not amount to averment of a ground which the Tribunal has jurisdiction to try and as a consequence the consideration by the Tribunal should be limited to the 140 names mentioned in Exhibit 'B' to the petition. The Act obliges me to consider all questions arising in connection with the election petition, including question of jurisdiction and the High Court in *M.A.N. Chettiar* V. *Saw. Ganesan* (A I.R. 1958 *Madras 187* at page 196) held so. Their Lordships observed:—

> "It" (the Tribunal) "had therefore not merely jurisdiction to enquire into this matter but indeed it was its duty to satisfy itself about it before it passes any such order. The Tribunal had in the exercise of its

undoubted jurisdiction framed issues on the pleadings and had raised the points mentioned by Mr. Nambiar for consideration. In these circumstances we do not find any justification for this Court assuming, as it were, the functions of the tribunal and examining matters which Parliament has assigned primarily if not exclusively to the Tribunal."

What has transpired is that a question of jurisdiction not raised before me was raised before the High Court and it has been dealt with by the High Court. That creates embarrassment as all the facts do not appear to have been brought to the notice of his Lordship in the High Court, because had that been done, it appears to me the High Court would not have then interfered and, in the view that the order passed by his Lordship in W.P. Nos. 182 and 183 of 1958 may not conclude their Lordships constituting a Bench hearing an appeal from this order under Section 116-A of the Act, I feel bound to make the following record

66. I.A. Nos. 2 and 4 of 1958, the affidavits accompanying them, the counter affidavits filed by the opponents, the orders passed by me, the writ applications before the High Court, the common affidavit accompanying them and the order of the High Court are appended hereto as Annexures I to X.

67. No exception was taken to the jurisdiction of the Tribunal to consider the charge laid in paragraph 36 of the petition in that it is defective in not giving a concise statement of facts as provided for by section 83(1)(a) of the Act. On the other hand, the 1st respondent pleaded on the merits of the charge and stated: "If indeed the votes of persons not in existence had been polled by unknown impersonators it is strange that the petitioner should be in a position to state categorically that every one of the illegal votes was cast in favour of this respondent—a statement which could be made only if the petitioner had means of knowing how and by when the illegal votes were cast", though he added, "This respondent states that as per relevant provisions of law the petitioner cannot be allowed to add to the number listed in Exhibit B which should therefore be taken as the final and maximum number which the petitioner hopes to prove." Even a plea on the merits coupled with a plea objecting to the jurisdiction would, in Dicey's view (Conflict of Laws, 1949 Edition, page 166), be submission to the jurisdiction as in raising the plea on the merits, the party takes the chance of a decision in his favour which can only be on trial of the issue. In cases where want of jurisdiction is not inherent and incurable by consent, acquiescence or waiver, the party taking exception to jurisdiction should confine his plea to want of jurisdiction and pray for consideration of that question first before pleading on the merits. Here what happened was pleas on the merits were raised without raising the plea as to jurisdiction in this regard, and issues were settled.

68. Issue 12 as settled by me asks:

"Whether votes in the names of dead persons were cast in favour of the 1st respondent; if so, how many? Whether this has materially affected the result of the election?"

The draft issue submitted by the petitioner was: (17).

"Whether a large number of votes in the names of dead persons were cast in favour of the 1st respondent and whether this has materially affected the result of the election?"

and the draft submitted on behalf of the 1st respondent reads: (9)

"Are the allegations in paragraphs 36 and 37 relevant in the absence of their having any material effect on the result of the election and if such allegations are relevant are they true and is the election of the 1st respondent liable to be declared void."

Issues were settled by me on 14th October 1957. On 25th October 1957 I ordered that issues as settled not being entirely as proposed by either party, any party requiring an amendment of any of the issues should make an application in that behalf which would be considered on 7th November 1957. The petitioner filed I.A. No. 4 of 1957 for amendment of and additions to the issues. This application was dismissed on 16th December 1957. No application was made on behalf of the 1st respondent. Issues having been thus settled to the satisfaction of the parties, the examination of witnesses was started on 16th December 1957. Even before that date the parties were directed to take out summons for production of documents from public offices which was accordingly done. The Returning Officer

was summoned to produce, and he did produce, among other documents, the marked copies of electoral rolls for the entire Krishnagiri Parliamentary constituency on 3rd December 1957. The 1st respondent had notice of it, having received copy of the memorandum on which the summons was issued (vide index Nos. 77, 94 and 97). On 16th December 1957 three witnesses were fully examined and the examination of the petitioner as his fourth witness was started, which was continued the next day and concluded the third day. In his examination on 17th December 1957 the petitioner swore (P.W. 4, para. 13, page 8).

> "The document filed with my election petition marked Ex. B therein is a list of instances where dead persons were impersonated and voted in the respective polling stations. Yet there were many other persons impersonating dead voters and exercised the dead persons' franchise to an extent of nearly 2000 votes."

He was not cross-examined upon this point; nor was any objection taken to recording of the evidence which has reference to more votes than the number covered by Exhibit B to the petition which is only 140. The fact that the verification by the petitioner is to the effect that the statements made by him in para. 13 onwards in the petition are based on information may perhaps be a reason why the witness was not cross-examined. That may affect the credibility of the testimony, but will not render him incompetent to testify, and the testimony not legal, or no evidence. The examination of the witnesses for the petitioner proceeded upon all other matters, leaving issue 12 to the last. It was only on 8th January 1958 that I.A. No. 2 of 1958 was filed by the 1st respondent for amendment of issues 12. I.A. No. 4 of 1958 for orders under rule 138 to open the marked copies of the electoral rolls was filed by the petitioner on 10th January 1958. Both were opposed, the opposition with regard to I.A. No. 4 of 1958 being limited to opening the marked list of voters not covered by Exhibit B to the petition. The sealed covers containing the marked lists of voters mentioned in Exhibit B to the petition were accordingly opened on 21st January 1958 (See order sheet) and the numbers of voters who had received ballot papers were intimated by me to the parties which they noted. It was then discovered that all the voters mentioned in Exhibit B had not taken ballot papers and tendered their votes. Orders were passed on 24th February 1958 dismissing I.A. No. 2 of 1958 and allowing I.A. No. 4 of 1958. Writ petitions Nos. 182 and 183 of 1958 in the High Court, supported by a common affidavit, were filed by the 1st respondent, and the order of the High Court was passed on 1st August 1958. The trial of issue 12 was stayed by the High Court pending disposal of the writ petitions. The trial of the other issues proceeded and was concluded as directed by the High Court before submitting the papers for reference in the writ petitions. No evidence other than that given by the petitioner as aforesaid was adduced by him upon issue 12.

69. The defect of pleading in the petition in that the names of deceased voters referred to in the first sentence of paragraph 36 were not mentioned and whose mention is necessary to constitute statement of facts under section 83(1)(a), and the Tribunal would have no jurisdiction to try that matter in its absence as held by the High Court, was not raised before me. The want of that jurisdiction, however, is not an inherent absence of jurisdiction as in the case of non-compliance with the provisions of sections 81, 82 and 117, and as was the case with section 83 of the old Act. The Supreme Court said in Jagan Nath's case (A.I.R. 1954 Supreme Court 210) at page 214, Col. 2:—(the passage was read in dealing with issue 15).

> "From the circumstance that section 82 does not find a place in the provisions of section 85, the conclusion follows that the directions contained in section 82 were not considered to be of such a character as to involve the dismissal of a petition *in limine* and that the matter was such as could be dealt with by the Tribunal under the *provisions* of the Code of Civil Procedure specifically made applicable to the trial of election petitions."

These observations were made with reference to the old Act and to apply them to the Act, section 83 has to be substituted for section 82. Under the provisions of the Code of Civil Procedure, the defect of pleading, though it may create difficulty for the Court and embarrassment to the opposite party in the matter of determination and conduct of the case, would not affect the Court's jurisdiction to try the case or issue unless the defect is such as to disclose no cause of action which would entail rejection of the plaint as is the case with non-compliance with section 81 relating to ground for petition. The defect may be regarded as having relation to jurisdiction in view of the use of the expression "shall" in section 83(1), (See *Gopalakrishna Ayya* V. *Province of Madras*, I.L.R. 1948 Madras 139 P.C. at page 149), but it is only a defect which can be cured by acquiescence,

consent or waiver, that is, it is a jurisdiction which can be conferred by consent or a jurisdiction whose exercise cannot be questioned after acquiescence. Had the above facts, including that evidence had already been taken to cover a much larger number than mentioned in Exhibit B to the petition, been brought to the notice of the High Court, the High Court would not it appears to me have interferred at that stage. Issue 12 has not even now been amended, though the order refusing amendment has been quashed and is capable of comprising numbers in excess of those mentioned in Exhibit B to the petition. There is evidence relating to votes far in excess of that number, *viz.*, two thousand. The difference in the votes secured by the returned candidate and the defeated candidate (2nd respondent) is only 367. If the evidence can be considered and if it is to be accepted, the result would be that the result of the election has been materially affected under Section 100(1)(d)(iii), which contemplates a case of the result of the election being materially affected by the reception of any vote which is void. The vote recorded in the name of a deceased voter is a void vote. Whether the result of the election has in this case been materially affected so far as the returned candidate is concerned depends upon further evidence as to any, and if so, how many, of the two thousand votes have been cast for the 1st respondent and if void votes in excess of 367 be found to have been cast for the 1st respondent, then his election would have to be declared void and the 2nd respondent declared duly elected as there is no recriminatory charge against him. But the consideration of void votes larger in number than 140 is prohibited by the High Court by its order on the writ petitions and I am bound by that prohibition.

70. An election petition can be presented by any elector on any of the grounds mentioned in sections 100 and 101 of the Act. Section 123 of the Act will also come in as the corrupt practices mentioned in Section 100 are described in Section 123. Their Lordships of the Supreme Court in Harishchandra V. Triloki Singh (A.I.R. 1957 Supreme Court 444 at page 451), after a reference to sections 81(1), 100(1), 100(2) and 101, observe thus:

> "These sections enumerate a number of grounds on which the election may be set aside, including the commission of the corrupt practices mentioned in section 123 of the Act, and quite clearly it is the different categories of objections mentioned in section 100, sub-sections (1) and (2), section 101 and section 123 that constitute the grounds mentioned in section 81(1)".

Under rule 22 an elector will not be admitted into a polling station except for the purpose of tendering his vote and is therefore not entitled to be present and watch whether there is any impersonation and the right to challenge under rule 24(3) is given only to the candidate or his agent and not to an ordinary elector. It would thus be impracticable, if not impossible, for an elector to state the names of deceased persons whose votes were tendered by personation. Vote is by secret ballot and it is not possible for anybody to know to which competing candidate a good vote or a void vote by personation is tendered. In a case like this, the statement of facts under section 83(1)(a) can only be the statement of a case which the petitioner proposes to prove as nothing more would be possible except in a case where all the personators confess to the petitioner of their having personated and disclose as to whom votes were cast. To insist upon an elector giving the names of the deceased persons whose votes are impersonated in his election petition resulting on the recording of void votes sufficient in number to affect the result of the election so far as the returned candidate is concerned would be to deprive him of the right to file a petition on that ground given to him by the statute. These are certain points which occurred to me but which I am precluded from considering and deciding in the face of the decision of the High Court in the writ petitions.

71. Confining consideration to 140 names as directed by the High Court, the inevitable conclusion is that the result of the election has not been materially affected so far as the returned candidate is concerned.

72. I have had experience of similar embarassing situations in other election petitions as well. With a view to avoiding such situations I avail of this opportunity and take the liberty of suggesting to the authorities concerned the desirability, may necessity, of having one or more legal practitioners for each State for entering appearance on behalf of Tribunals before the High Court and the Supreme Court when the Tribunals function, and after their termination of office, to represent the public whom the Tribunals represented (See per Fitzgerald, J. in Longford, (1870) 2 O'M and H p. 10, 'though I am here to represent the public') as also to appear before the Tribunals themselves when called upon to do so to elucidate questions of law. The law in the erstwhile State of Cochin enabled the

Commissioners dealing with election petitions to call upon the Advocate-General to appear before them and elucidate required points of law, as in Section 89, of the Old Act (repealed).

73. *Issue* 14:—There are many parts of the petition which are vague and they have all been indicated above.

74. *Issue* 16:—There is no evidence to show that any vote recorded for the 1st respondent is bad for any reason. It is only in a case where the election of the returned candidate is declared void on the ground that he secured by corrupt practice votes larger in number than the majority he secured that a declaration that the other candidate is duly elected, in the absence of recrimination and proof, would follow. Eligibility to be declared duly elected depends upon securing the largest number of valid votes (See Hari Vishnu V. Syd Ahmed, A.I.R. 1955 Supreme Court 233, at page 248, where their Lordships, in considering whether the result of the election has been materially affected observe that "the result must have been materially affected on the basis of the valid votes", and A.I.R. 1954 Supreme Court 440). No such situation arises in this case and the 2nd respondent cannot therefore be declared duly elected as prayed for in the petition. Relief No. 2 asked for in the petition is refused.

75. *Issue* 8 is as follows:

> "Whether the 1st respondent spent, in connection with his election, any amount in excess of Rs. 25,000; whether the 1st respondent omitted to include in his account any item of expenditure actually incurred by him in connection with his election; and whether he is guilty of a corrupt practice under Section 123(6) of the Act?

Para. 31 of the petition relates to this charge. The 1st respondent asked for particulars and they were supplied by the petitioner and the particulars were incorporated, at the petitioner's request, as sub-paragraph 31-A to para. 31. The 1st respondent's answer to the charge in para. 31 is in para. 23 of his written statement. He did not file any further statement in answer to the particulars contained in para 31-A. No evidence has been adduced on behalf of the petitioner that the maximum expenditure prescribed for a candidate in a single member Parliamentary Constituency, *viz.*, Rs. 25,000 has been exceeded. Learned counsel for the 1st respondent contended in argument that on an interpretation of para. 31, the charge laid against the 1st respondent is merely one of exceeding the maximum prescribed. The charge in para. 31 was understood as containing a charge of contravention of the provisions of all the three clauses constituting Section 77 and not only of the third clause which relates to exceeding the maximum prescribed. The charge is worded thus in the first sentence of that para: "The petitioner states that the first respondent has incurred and authorised the expenditure in contravention of Section 77 of the Act and committed a corrupt practice under Section 123(6) of the Act," and the concluding sentence is: "The first respondent has failed to conform to the provisions of Section 77 and he has exceeded the maximum amount prescribed for expenditure for the election." The language of the charge may lend some colour to the contention urged on behalf of the 1st respondent but on a liberal and proper construction of the charge it is clear that what is averred is contravention of the entire Section 77, *i.e.*, contravention of all the clauses it consists of. It is on such understanding that the issue was settled. The Supreme Court in Tirath Singh V. Bachittar Singh (A.I.R.1955 Supreme Court 830, at page 832, Cols. 1 and 2) observe:

> "It is contended for the appellant that in the petition there was no mention of the bargain on which the finding of bribery by the Tribunal was based, that the charge in the petition related only to the order dated 7th December 1951, and that accordingly it was not open to the petitioner to travel beyond the petition and adduce evidence in proof of a bargain which had not been pleaded. This is to put too technical and narrow a construction on the averments. The charge in the petition was not merely that the appellant had passed the order dated 7th December 1951 but that he had passed it with a view to induce the sweepers to vote for him.
>
> That clearly raised the question as to the circumstances under which the order came to be passed, whether it was in the course of official routine as the appellant pleaded, or under circumstances which were calculated to influence the voters. Issue 5 put the matter beyond doubt, when it pointedly raised the question whether the grant was 'for three months only during the election days in order to induce them (the sweepers) to vote for respondent 1'.

Under the circumstances, the complaint that the evidence and the finding as to the bargain went beyond the pleadings and should be ignored appears to be without any substance....."

The contention of learned counsel for the 1st respondent cannot be accepted as I consider that on a proper interpretation of the charge it means that the entire Section 77, i.e., all the clauses it consists of, have been contravened by the 1st respondent and not merely clause (3).

76. It was next contended that it is only contravention of sub-clause (3) of Section 77, *i.e.*, "exceeding the prescribed limit of expenditure" and not contravention of clauses (1) and (2), that would constitute a corrupt practice under Section 123(6) of the Act, which reads: "The incurring or authorising of expenditure in contravention of section 77". The argument is that Section 123(6) creates the incurring or authorising of expenditure as by itself constituting a corrupt practice which can be only if the maximum prescribed is exceeded which is prohibited by clause (3) of Section 77. It is pointed out that clauses (1) and (2) of Section 77 provide for the keeping of an account and that account containing particulars prescribed relating to expenditure incurred or authorised as mentioned in clause (1). The use of the past tense indicates a completed act which has to be succeeded by the keeping of an account and the entering therein of prescribed particulars. The keeping of an account and entering therein of particulars do not constitute and are not, it is argued, comprised, in the incurring or authorising of expenditure under section 123(6) of the Act. The argument would at first sight appear attractive but a closer scrutiny of section 123(6) itself, of the provisions in the old Act and old rules, the amendment thereto resulting in the Act and the rules and the purposes of the provisions will clearly show that the argument cannot be accepted.

77. The provisions of the Old Act and the Old Rules, and the Act and the Rules, as to keeping accounts, expense, practices, return, and the respective provinces of the Tribunal and the Election Commission may now be noticed in juxtaposition:—

ELECTION EXPENSES

*Keeping Accounts.*

| The Old Act and the Old Rules. | The Act and the Rules |
|---|---|
| *Sec.* 44 : *Duty of the election agent to keep accounts.*— | *Sec.* 77 : *Account of election expenses and and maximum thereof.* |
| Every election agent shall, for each election for which he is appointed elecion agent, keep *separate* and regular books of account, and shall enter therein such particulrs of expenditure in connection with the election as may be prescribed. | (1) Every candidate at an election shall either by himself or by his election agent keep a *separate and correct* account of *all exenditure* in connection with the election incurred or authorized by him or by his election agent *between the date of publication of the notification. Calling and the date of declaration of the result thereof, both dates inclusive.*<br>(2) The account shall contain such particulars as may be prescribed.<br>(3) The otal of the said expenditure shall not exceed the amount as may be prescribed. |
| *R.* 111 : *Accounts of election agents.*— | *R.* 131 : *Particulars of account of election expenses.*— |
| The books of accounts to be kept by an election agent under Section 44 shall contain a statement.—<br>(*a*) of all payments made or authorised by the candidate or by his election agent or made on behalf of the candidate or in his interests by any other person with the consent of the candidate or his election agent for epenses incurred on account of, or in connection with, the conduct and management of the election, and | (1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure *from day to day, namely* :—<br>(*a*) the date on which the expenditure was incurred or authorised ;<br>(*b*) the nature of the expenditure (as for example, travelling postage, or printing and the like) ; |

| The Old Act and The Old Rules | The Act and The Rules |
|---|---|
| (*b*) of all unpaid claims in respect of such expenses of which the candidate or his election agent is aware. | (*c*) the amount of the expenditure—<br>(*i*) the amount paid ;<br>(*ii*) the amount outstanding;<br>(*d*) the date of payment ;<br>(*e*) the name and address of the payee;<br>(*f*) the serial number of vouchers, in case of amount paid ;<br>(*g*) the serial number of bills, if any, in case of amount outstanding ;<br>(*h*) the name and address of the person to whom the amount outstanding is payable.<br>(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.<br>(3) All vouchers shall be lodged along with the account of election expenses, aranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (*f*) of sub-rule (1).<br>(4) It shall not be necessary to give the particulars mentioned in item (*e*) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2). |

*Return of Election Expenses.*

| The Old Act and the Old Rules. | The Act and The Rules |
|---|---|
| RETURN OF ELECTION EXPENSES—<br>*S.* 76 : (1) Within the prescribed time after election there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed by him and his election agent.<br>(2) Every such return shall be in such form and shall contain such particulars as may be prescribed and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a Magistrate.<br>(3) Notwithstanding anything in this section where owing to absence form India a candate is unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and and shall be accompanied by a declaration by the election agent only, and the candidate shall, within fourteen days after his return to India, cause to be lodged with the Returning Officer a declaration made on oath or solemn affirmation before a Magistrate in such form as may be prescribed. | *S.* 78 : *Lodging of account with the returning Officer.*—<br>Every *contesting candidate* at an election shall within thirty days from the date of election of the returned candidte or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodged with the returning officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77. |

| The Old Act and The Old Rules | The Act and The Rules |
|---|---|
| *R* 112 :<br>(1) Relates to time for lodging.<br>(2) Relates to the form of return and declaration<br>(3) Relaes to form of declaration of candidate if made later.<br>(4) Provides for certificate by the reutrning officer whether return was lodged *within* the time and the *manner* prescribed | *R* 132 : The returning Officer shall, within two days form the date on which the account of election expenses has been lodged by a candidate under section 78, cause a notice to be affixed to his notice board, specifying—<br>(*a*) the date on which the account has been lodged ,<br>(*b*) the name of the candidate , and<br>(*c*) the time and place at which such account can be inspected |
| *R.* 113 *Notice that return of election expenses has been lodged and inspection and copy of such return* — | *R.* 133 *Inspection of account and the obtaining of copies thereof* — |
| Any person shall on payment of a fee of one rupee, be entitled to inspect any such return and declarations and, on payment of such fee as may be fixed by the Election Commission in this behalf, be entitled to obtain attested copies thereof or of any part thereof. | Any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf, be entitled to obtain attested copies of such account or of any part thereof |
| *R.* 114 : *Decision of Election Commission regarding persons who have defaulted in making the return of election expenses and have thereby incurred disqualifications and publication of the list of such persons* — | *R* 134 (1) As soon as may be after the expiration of the time specified in section 78 for the lodging of the account of election expenses at any election, the returning officer shall report to the Election Comsion.— |
| (1) and (2) Provide for statement by Returning Officer to Election Commission whether return has been lodged | (*a*) the name of each contesting candidate,<br>(*b*) whether such candidate has lodged his account of election expenses and if so the date on which such account has been lodged , and<br>(*c*) whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules |
| (3) Provides for publication by Returning Officer of a list of prsons who are defaulters | (2) Immediately after the submission of the report referred to in sub-rule (1) the returning officer shall publish a copy thereof by affixing the same to his notice board |
| (4) As soon as may be on the receipt of the statement referred to in sub-rule (1) or in sub-rule (2) the Election Commission shall, after considering the report of the returning officer decide whether any candidate or election agent has failed to lodge the return of election expenses *within the time* and *in the manner* required by the Act and these rules and the candidate and the election agent have thereby incurred disqualifications under clause (*c*) of section 7 or under section 143. | (3) As soon as may be after the receipt of the report referred to in sub rule (1) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses *within the time* and *in the manner* required by the Act and these rules |
| (5) Provides for publication of names of defaulters found by the Election Commission | (4) The Election Commission shall notify in the official gazette the names of contesting candidates who according to its decision have failed to lodge accounts of their election expenses within the time and in the manner required by the Act and these rules and shall also inform every such candidate of the decision. |

| The Old Act and The Old Rules. | The Act and The Rules. |
|---|---|
| (6) Provides for representation by defaulters before the Election Commission. | (5) Any contesting candidate whose name has been notified under sub-rule (4) may submit a representation in writing to the Election Commission for the removal of the disqualification incurred by him under clause (*c*) of section 7 with an explanation as to why the default was made in lodging the account of election expenses within the time and in the manner required by the Act and these rules. |
| | (6) Every such candidate shall at the same time send to the returning officer a copy of the representation and, if he has not already done so, an account of election expenses as required by the Act and these rules. |
| | (7) The returning officer shall within five days of the receipt thereof forward to the Election Commission the copy of the representation and the account (if any with such comments as he wishes to make thereon. |
| (7) As soon as may be on receipt of the representation under sub-rule(6) and after such inquiry as it thinks fit, the Election Commission shall decide whether or not the disqualification incurred by the candidate or the election agent should be removed. | (8) The Election Commission shall, after considering the representation submitted by the candidate and the comments made by the returning officer and after such inquiry as it thinks fit, decide whether or not the disqualification incurred by the candidate under clause (*c*) of section 7 should be removed. |

*Maximum of Election Expenses*

Chapter VIII, Part V, containing three sections, 76, 77 and 78 was substituted by new sections retaining the old members,

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|---|---|
| 77. *Maximum election expenses etc.*— | 77. *Account of election expenses and maximum thereof.*— |
| The Maximum scales of election expenses at elections and the numbers and description of persons who may be employed for payment in connection with elections shall be such as may be prescribed. | (1) Every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditue in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive. |
| | (2) The account shall contain such particulars as may be prescribed. |
| | (3) The total of the said expenditure shall not exceed such amount as may be prescribed. |
| *R.* 117 : *Maximum election expenses.* | *R.* 135 : *Maximum election expenditure.*— |
| No expense shall be incurred or authorised by a candidate or his election agent on account of or in respect of the conduct and management of an election in any one constituency in a State in excess of the maximum amount specified in respect of that constituency in Schedule V. | The total of the expenditure incurred by a candidate in connection with his election in any one constituency in a State shall not exceed the maximum amount specified in respect of that constituency in Schedule III. |
| *R.* 118 : *Number of persons who may be employed for payment in connection with elections.* | |
| No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election. | |

*Practices relating to account and expenditure :*

| The Old Act and the Old Rules | The Act and the Rules |
|---|---|
| *Sec.* 123 : *Major corrupt practices :* | *Sec.* 123 : *Corrupt practices :* |
| * * * | * * |
| (7) The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder. | (6) the incurring or authorising of expenditure in contravention of section 77. |
| *Sec.* 124 : *Minor Corrupt practices :* | |
| * * * | |
| (4) the making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return. | Repealed and re-enacted |
| *Sec.* 125 : *Illegal practices :* | |
| The following shall be deemed to be illegal practices for the purposes of this Act :— | |
| (1) The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate. | Repealed. |
| *Explanation* :—Any such expenses aforesaid incurred or authorized by any institution or organisation for the furtherance of the prospects of the election of a candidate supported by such institution or organization shall not be deemed to be expenses incurred or authorized within the meaning of this clause. | |

## DISQUALIFICATION

| The Old Act and the Old Rules | The Act and the Rules |
|---|---|
| *S.* 7 : Disqualification for member-ship of Parliament or of a State Legislature. | *S.* 7 : Disqualification for membership of Parliament or of a State Legislature. |
| * * | * * |
| (*c*) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge return of election expenses within the time and in the manner required by or under this Act, unless five years have elapsed from the date by which the return ought to have been lodged or the Election Commission has removed the disqualification. | (*c*) if he has failed to lodge an account of his election expenses within the time and is in the manner required by or under this Act, unless three years have elapsed from the date by which the account ought to have been lodged or the Election Commission has removed the disqualification. |
| *Sec.* 140 : *Corrupt and illegal practices entailing disqualification.*— | *Sec.*140 : *Corrupt practices entailing disqualification.*— |
| (1) The following corrupt or illegal practices relating to elections shall entail disqualification for membership of Parliament and of the Legislature of every State, namely :— | The corrupt practices specified in Section 123 shall entail disqualification for membership of Parliament and of the Legislature of every State for a period of six years counting form the date on which the finding of the Election Tribunal as to such practice takes effect under this Act. |
| (*a*) corrupt practices specified in Sec. 123 or Sec. 124, and | |
| (*b*) illegal practices specified in section 125. | |

| The Old Act and the Old Rules | The Act and the Rules |
|---|---|
| (2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act. | |
| *Sec.* 143 : *Disqualification arising out of failure to lodge return of election expenses* : If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter VIII of Part V apply, or if such a return is found, either upon the trial of an election petition under Part VI or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years form the date by which the return was required to be lodged. | Repealed and re-enacted. |

**Under the Act and the Rules:**

Account must be

(a) Kept by a candidate by himself or on his responsibility by his election agent.

(b) Besides being separate, be correct and be of *all* expenditure not merely of amounts paid or of outstandings of which he is aware—as before —no third person can incur expenditure—all outstanding dues with details of the creditors are to be shown with bills.

(c) Must be from day to day.

(d) Must contain particulars detailed in Rule 131.

(e) Vouchers must be obtained for each item except where vouchers cannot be had.

(i) Must commence from date of the notification for election and not only from date of nomination as was understood before.

*Lodging of accounts must be* of a true copy of the account kept accompanied by vouchers. This avoided possibility of a false return as before and consequences thereof, and controversy as to whether the return should not merely be really false but actuated by a bad motive which it had been held, would be only when an omitted item if included would lead to exceeding the maximum. Omission to include an item of expenditure by inadvertance, it was held, would not have been a corrupt practice under the Old Act. The Act avoids that loophole and prohibits non-inclusion of any item for any reason whatsoever. Insistence on vouchers places another check against false entries and aims at avoiding forswearing by imparting a statutory conclusiveness to the accounts and vouchers.

78. The corrupt practice under section 123(6) is no doubt incurring or authorizing of expenditure, but it is not incurring or authorizing of expenditure *simpliciter* but it is incurring or authorizing of expenditure in contravention of section 77. It is this qualification of the expenditure in that it should be in contravention of section 77, that constitutes the vice of the matter and renders it a corrupt practice. In other words, the corrupt practice consists in the contravention of the provisions of section 77 not of every matter mentioned therein but of the provisions therein contained concerning or relating to incurring or authorizing of expenditure and the contravention hit at is contravention of section 77 as a whole and not of any one of its parts. If an expenditure is incurred or authorized and an account is kept under section 77(1) and particulars are given under section 77(2) and the expenditure incurred does not exceed the maximum under section 77(3), then there is no contravention of any provision of section 77. If the expenditure is incurred or authorised and an account is kept under section 77(1) but no particulars are given under section 77(2) and there is no exceeding

the maximum under section 77(3), there is a contravention of the second clause. If an expenditure is incurred or authorised and an account is not kept about it as regards the amount under section 77(1) but particulars are mentioned and there is no exceeding of the maximum under section 77(3) there is contravention of section 77(1). If an expenditure is incurred or authorised and an account is kept under section 77(1) and particulars are given under section 77(2) but the maximum is exceeded under section 77(3), there is a contravention of section 77(3). In this way there will be cases of contravention of one or more of the three clauses of which section 77 consists. This is only illustrative, and not exhaustive, of the kinds of contravention possible of the various provisions in clauses 1, 2 and 3 of section 77. If an expenditure is not incurred but an amount is entered in the account and particulars thereof are given which are fictitious, there may be contravention of section 77(1) in that that sub-clause prescribes that *correct* accounts shall be kept. The making of a fictitious entry offends this rule, but it may not be a corrupt practice under section 123(6) because the corrupt practice consists only in incurring or authorizing of expenditure which there is none when a fictitious item of expenditure is entered in the account because it is not incurred.

79. Section 77 does not exist independent of its three clauses. The three clauses comprise and constitute the section. There is no warrant to confine the operation of section 123(6) to contravention of clause (3) of section 77, excluding clauses (1) and (2). It is not contended that contravention of clause (3) will not be attracted by section 123(6). The argument is that section 123(6) must be read adding (3) to section 77 at the end. In *The Tipperary case* the question whether an election petition could be presented challenging the return of a candidate after his death arose and that question depended upon the interpretation of section 38 of The Parliamentary Elections Act, 1868, 31 *and* 32, *Vict. c.* 125, which provided:

> *Section 38: If before the trial of any election petition* under this Act any of the following events happen in the case of the respondent (that is to say):
>
> 1. If he dies;
>
> 2. If he is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain;
>
> 3. If the House of Commons have resolved that his seat is vacant;
>
> 4. If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition:
>
> Notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons not exceeding three may be so admitted."

The argument was that the section means *"If after the presentation, and before the trial of any election petition"*. Their Lordships say, referring to this argument:

> "These words, however, are said to be found in the 38th section of the Parl. El. Act, or to be necessarily implied in it, and we are asked to read the section as if it ran, 'If after the presentation, and before the trial of any election petition'. What warrant is there for introducing those words? It is a very common form of expression in Acts of Parliament, and doubtless would have been used here, if the intention of the Legislature was so to limit it. The words used import that if the event occurs at any time before the trial of the petition, the provision is to apply, and *we have no right to tamper with the language of the Act.*" (3, O'M and H.19 at page 23). (Italics is mine).

80. The argument is it is only contravention of clause (3) of section 77 that is attracted. To justify confining the application of section 123(6) to contravention of the 3rd clause of section 77, the provisions of the other two clauses must be

such that they do not admit of contravention, which may be the case if they do not contain mandates to be complied with but are merely declaratory. But clauses (1) and (2) do contain mandates Section 77 may again be read:

"*Section 77: Account of election expenses and maximum thereof*:—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Clause (1) enjoins upon a candidate the obligation by himself or by his election agent to keep a *separate* and *correct* account of *all expenditure* incurred or authorised. *Separate, correct*, and *all expenditure*, must be stressed. Clause (2) is equally mandatory and provides that the account shall contain such particulars as may be prescribed Both clauses (1) and (2) can be contravened in various ways. No account may be kept at all. The account may not be a separate account, or it may not be a correct account, or it may not be of all expenditure incurred or authorised, or it may not contain any particulars at all or not all the particulars as may be prescribed. An account may be incorrect if it enters expenditure not incurred or authorised or it enters wrong figures or in various other ways. Clause (2) prescribed that particulars shall be incorporated in the account. Rule 131 prescribes particulars of an account of election expenses as follows:

"131. Particulars of account of election expenses:

(1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely—

(a) the date on which the expenditure was incurred or authorised;

(b) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(c) the amount of the expenditure—

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

(f) the serial number of vouchers, in case of amount paid;

(g) the serial number of bills, if any, in case of amount outstanding;

(h) the name and address of the person to whom the amount outstanding is payable.

(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(3) All voucher shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

(4) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2)".

Clause (1), it will be noticed, provides that the accounts must be from day to day and clause (2) enjoins upon the candidate the obligation of obtaining a voucher for every item of expenditure; and section 123(6) hits at contravention of any of the mandates contained in section 77 including those contained in the rules whose application is attracted by the use of the word 'prescribed' in clauses (1) and (2) of section 77. If the legislature meant to hit at only contravention of clause (3) of section 77 a reference to clause (3) could have been made in section 123(6) after section 77 which would then read, "the incurring or authorising of expenditure in contravention of section 77(3)"—a very easy and obvious and usual thing which would have been done had it been intended. The language of section 123(6) clearly applies to every provision of section 77 contained in all its clauses in connection with incurring or authorising of expenditure.

81. Again, if what is intended to be hit at is only the exceeding of the prescribed maximum of expenditure, nothing would have been easier than to draft section 123(6) in some such way as "exceeding the maximum of expenditure prescribed." Keeping an account of the expenditure incurred or authorised is prescribed by section 77(1) and giving particulars thereof by section 77(2) as concomitants of the incurring or authorizing. If an expenditure is incurred or authorised, and a correct account is kept thereof and particulars given, clauses (1) and (2) are complied with. If an item of expenditure is incurred or authorised and no account is kept or particulars given, then it would be an incurring or authorising of expenditure in contravention of section 77(1) or (2) as the case may be. If an expenditure is not incurred or authorized but entered in the account with fabulous particulars, it would be a contravention of clauses (1) and (2) of section 77 in that the clauses enjoin the keeping of correct accounts and giving of their particulars which a fabulous entry and fabulous particulars would not be. This would not be a corrupt practice under section 123(6) as it does not involve the incurring or authorizing of expenditure which last words are used to limit the corrupt practice in the contravention of section 77 to that particular kind of contravention, or, in other words, it is to confine the corrupt practice to contravention of section 77 to cases of expenditure actually incurred or authorized that the words "incurring or authorizing" have been introduced in section 123(6). If the expenditure incurred or authorized is in excess of the maximum prescribed, it contravenes clause (3) of section 77. If the item of expenditure incurred or authorized is within the maximum prescribed but if in respect thereof an account is not kept as provided in clause (1) of section 77 and/or particulars be not given as provided for by clause (2) of section 77, then that would be a case of an incurring or authorizing of an expenditure in contravention of either the one or the other or both of the said clauses (1) and (2). In my view, section 123(6) is clear and there is really no scope for interpretation. If, however, the words "incurring or authorizing" occurring in section 123(6) create any difficulty in interpretation, then the principles of interpretation and the amendments made to the pre-existing law have to be considered.

82. In *Ponnuswami V. Returning Officer, Namakkal* (A.I.R. 1952 Supreme Court 64) their Lordships of the Supreme Court considered the question whether a writ application would lie to quash the order of a returning officer rejecting a nomination paper which depended on an interpretation of Article 329(b) of the Constitution which provides:

> "No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

In that connection their Lordships referred to the corresponding provisions in the Government of India Act 1919 and 1935 and to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936 (page 71 para. 22) and said: (para. 24):

> "The rules to which I have referred were apparently framed on the pattern of the corresponding provisions of the British Acts of 1868 and 1872; and they must have been intended to cover the same ground as the provisions in England have been understood to cover in that country for so many years. If the language used in Article 329(b) is considered against this historical background, it should not be difficult to see why the framers of the Constitution framed that provision in its present form ....."

and concluded: (para. 25):

> "And now a word as to why negative language was used in Article 329(b). It seems to me that there is an important difference between Article 71(1) and Article 329(b). Article 71(1) had to be in the affirmative form because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this Article. Article 329(b).....was primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged....."

Their Lordships held that a writ petition is not competent and that an election petition is the only remedy. The last argument against that view as reproduced by the learned Judges of the High Court was: (para. 26):

> "It was next contended that if nomination is part of election a dispute as to the validity of nomination is dispute relating to election and that can be called in question only in accordance with the provisions of Article 329(b) by the presentation of an election petition to the appropriate Tribunal and that the Returning Officer would have no jurisdiction to decide that matter, and it was further argued that section 36 of Article 43 of 1951 would be *ultra vires* in as much as it confers on the Returning Officer a jurisdiction which Article 329(b) confers on a Tribunal to be appointed in accordance with the Article."

Referring to this their Lordships say:

> "This argument displays great dialectical ingenuity, but it has no bearing on the result of this appeal and I think it can be very shortly answered. Under section 36, Representation of the People Act, 1951, it is the duty of the Returning Officer to scrutinize the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged properly, any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue. In discharging the statutory duty imposed on him, the Returning Officer does not call in question any election. The scrutiny of nomination papers is only a stage, though an important stage, in the election process. It is one of the essential duties to be performed before the election can be completed, and anything done towards the completion of the election proceeding can, by no stretch of reasoning, be described as questioning the election The fallacy of the argument lies in treating a single step taken in furtherance of an election as equivalent to election. The *decision* of this appeal, however, *turns not on the construction of the single word 'election', but on the construction of the compendious expression—"no election shall be called in question in its context and setting*, with due regard to the scheme of Part XV of the Constitution and the Representation of the People Act, 1951."

Similar is the fallacy of the argument of the 1st respondent in this case and consists in considering and attempting to apply the words "incurring or authorizing" in section 123(6) to section 77 divorced from their context. This question is not what are the sub-clauses of section 77 to which the words "incurring or authorizing" by themselves would apply but which are the clauses of section 77 to which "the compendious expression", to borrow their Lordships' words, "incurring or authorizing in contravention of section 77" apply.

83. The Supreme Court in *Bhikaji Keshav* V *Brijlal Nandlal* (A.I.R. 1955 Supreme Court 610 at 614) in considering the question of the interpretation of the words "candidates duly nominated at the election" in section 82 of the old Act around which there was a controversy between the High Courts based on the words "at the election" and not "for the election" said:

> "If we were called upon to settle this controversy, we would prefer to base the decision not on any meticulous construction of the phrase "at the election" but on a comprehensive consideration of the relevant provisions of the Act and of the rules framed thereunder and of the *purpose, if any of the requirement under section* 82 as to the joinder of parties other than the returned candidate."

The purpose of the legislation in this regard may now be considered. Purity is paramount in election and all election law aims at its attainment. In a democracy a candidate for the legislature dedicates, so to say, himself for the service of the

people and qua candidate, and member if he were returned, all his acts are public and nothing can be concealed from the people. Undisclosed and unchecked expenditure tends towards impurity in elections, and the legislature has, from earliest times, intervened to eliminate that tendency. Hammond's short Historical Survey of the Evolution of the office of the election agent is illuminating:

"As long ago as 1696 the Election Act (7 and 8 will. III c.4) mentioned the 'excessive and exorbitant expenses contrary to the laws and in violation of the freedom due to the election of representatives for the Commons of England in Parliament, to the great scandal of the kingdom, dishonourable and may be destructive to the constitution of Parliaments'. Various attempts were made to curtail expenditure, Eventually an independent third person was appointed under the title of 'election auditor', through whose hands all moneys spent on elections were to pass, and who had to publish accounts of all such expenditure.

It was soon found that mere publication and audit did not either curtail expenditure or remove malpractices. The auditor could not prevent the candidate from spending money; his powers were restricted to incurring such expenditure as the candidate authorised, and to publish such amounts as the latter thought fit to divulge. The next stage was, therefore, the appointment of one or more persons as "Expenses Agents". They alone could make payments and were expected to know what expenses were legal, illegal or corrupt, and were with the candidate personally liable Each general election and also several municipal elections resulted in petitions which disclosed further malpractices, and hence eventually was evolved the present system now transplanted in part to India by which one, *and only one* (Ballia, I. E P. 31) expert in the law of elections is to be nominated by the candidate to manage all his business before, during and after the election so far as it may relate to the conduct of the election or the return of the candidate. The candidate may prefer to be his own election agent, and if so must declare himself as such This appointment is in fact the king-pin of the electoral machinery, and in connexion with its duties there have been many judicial pronouncements. Thus Field, Judge in Barrow-in-Furness (1886), 4, O'M and H 82;

'The object of the Act is, that a person shall be the election agent, who shall be effectively responsible for all the acts done in procuring the election. He is to hire the polling clerks; that is a distinct and positive enactment. He is to hire everybody; no man is to be paid money by anybody that does not pass through his hands. No contract is to be made by anybody but him; he is the person to make the contract, because he is a known and a responsible man who can be dealt with afterwards, and who can be looked to afterwards for an explanation of his conduct in the management of the election. It is not to be left, says the legislature, to uncertain bodies of people, to floating committees, or bodies of that sort, or even to a series of inferior people, who we know in the former days of elections were called managers, and people of various descriptions and denominations and whose acts no one would be responsible for or know anything at all about.

The object of the Act was, it seems to me, that the affairs of the election should be carried on in the light of day, and that a respectable and responsible man, responsible to the candidate and to the public, should be there to do all that was necessary.'

Election agents appointed in India will do well also to bear in mind the advice given by Cave, J. in Stepney (1892, Day's election cases, 99):

"He ought to keep a cash book, in which everything should be set down in chronological order, so that it can be told by looking at the cash book exactly when such sum was spent, how it was spent, and to whom it was given. He would be well advised also if he had an order-book with counterfoils, which should be numbered consecutively, and wrote down every order upon the form and upon the counterfoil, so that by an inspection of the book one could at once see that all the counterfoils were there, and that everything that had been ordered was put down in its place, and on the counterfoil that belonged to it.

> Lastly, he would be wise to have a receipt book made up in a similar form, and to take a receipt from the persons to whom he pays any money, upon one of these forms, using them also again consecutively and in chronological order. When a man has got those documents he can come with confidence before an election tribunal and say: 'Those books represent everything I have ordered, everything I have spent, everything I have paid." (The Indian Candidate and Returning Officer, Hammond, pages 52 and 53).

84. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, did not immediately fix a maximum for election expenditure Referring to this Order Nandlal says in his Law and Practice of Elections, 1937 at page 262: "It is true that no maximum has yet been prescribed in India for expenses which can be incurred. The absence of such a maximum does not relieve a candidate from the necessity of compliance with the rules. Election expenses afford a useful check on the methods employed in the conduct and management of election and the matter cannot be treated lightly." "If any particular item of expenditure is not included in the return of election expenses, it is evidence of knowledge on the part of the election agent that the expenditure is corrupt (Basappa *V.* Nagappa, 3 E.E.R. 197, which went up to Supreme Court in A.I.R. 1954 Supreme Court 440). The law in India is stricter in this regard than the English law which allows an amount of £100 for the personal expenses of the candidate which provides an avenue of possible illegitimate expenditure. No personal expenditure is permitted in India as a part of the expenditure for election. The importance attached to items of expenditure is thus not on account of a maximum prescribed. A check is introduced by the rule that no candidate should incur an undisclosed item of expenditure. Another check is introduced by the fixation of a maximum. A maximum was fixed in the Representation of the People Act 1949 (English) section 64 In India too a maximum was fixed by the old Act and the old rules under which the first general elections after the constitution of India were held in 1952.

85. There was an obligation in a candidate under the old Act to appoint an election agent. Sections 44, 76, 77 and 78, 123(7), 124(4), 125(1) and the old rules 110 to 118 in Chapter VII of the old rules were the provisions of the old Act and the old rules in this regard. Appointment of election agent is not obligatory under the Act and the rules. Sections 76, 77 and 78, 123(6) and rules 133 to 135 comprised in Part III of the rules are the provisions of the Act and the rules. It should be noticed that the difference between major and minor corrupt practices and illegal practices that existed under the old Act and the old Rules is eliminated in the Act and the Rules. Whereas under the old Act and the old Rules it was the duty of the election agent to maintain an account of election expenses under section 44, that obligation is now cast upon the candidate himself though he might have his account kept by his agent on his responsibility. Whereas under the old Rule 111(a) the expenditure incurred by persons other than the candidate and his election agent had to be entered in the account and the entry of unpaid claims concerned only such as the candidate or his agent were aware, in the Act and the Rules no expenditure can be incurred or authorised except by the candidate or his election agent and every outstanding claim must find a place in the account. The forms prescribed under the old Act and the old Rules for submission of return of election expenses have been dispensed with and under the Act and the Rules it is provided that the return shall be a true copy of the account maintained under section 77. The provision in section 124(4) of the old Act "that the making of a return of election expenses which is false in material particulars or the making of a declaration verifying any such return" constituting a minor corrupt practice has been repealed as that led to controversies as to whether a return which was in fact false would be a minor corrupt practice if it had not an evil motive behind it. The section left a loophole for escape. Section 123(7) of the old Act rendered "the incurring or authorising of expenditure by a candidate or his agent in contravention of this Act or any rule made thereunder" a major corrupt practice The reference obviously was to section 77 of the old Act which provided for "maximum election expenses etc." which enacted: "The maximum scale of election expenses at elections and the numbers and description of persons who may be employed for payment in connection with elections shall be such as may be prescribed", and the old rules 117 and 118 fixed the maximum election expenses and the number of persons who may be employed for payment in connection with the elections and section 44 was not attracted. Rule 111 of the old Rules provided for keeping of an account of expenditure incurred on account of or in connection with the conduct and management of the election. The time from which the account should start was not specified. This enabled candidates to contend that the time for keeping accounts is only from the nomination and to arrange for almost all matters in connection with elections

after the publication of the notification calling the election, spending whatever they liked, and to defeat the purpose of the rule. The law was amended and Section 77 of the Act enacted that every expenditure incurred or authorized "from the date of publication of the notification calling the election" should be entered in the account. The old Act and the old Rules did not provide for the obtaining of vouchers as the Act and the Rules do. All these changes look one way and are deliberately designed to tighten the hold on the candidate and secure a correct and complete disclosure of all his expenditure in connection with the elections. Election is a matter of public interest and Rule 133 provides that "*any person* shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf, be entitled to obtain attested copies of such account or of any part thereof." This rule relates to the account to be lodged by a contesting candidate under section 78 of the Act. The Election Commission is concerned only with the account lodged under section 78 which would certainly be a true copy of the account kept under section 77, and even in respect of the account so lodged the consideration of the Election Commission is confined to the time when and the manner in which the accounts have been lodged under Rule 134 and has no concern with, or power regarding, the question whether an account has been in fact kept under section 77 or not. The result is that if no accounts are in fact maintained under section 77 but false accounts are lodged in time and in the form prescribed under section 78, the candidate would be free and cannot be caught by the Election Commission and if Section 123(6) will not apply to contraventions of clauses (1) and (2) of Section 77 the candidate cannot be caught by the Tribunal either, and the mandatory provisions of those clauses enacted to serve an important necessary and salutary purpose can be violated with impunity, that is to say, there would be no sanction attached to the violation of the mandatory provisions contained in section 77 clauses (1) and (2). The law is made to be obeyed and to understand section 123(6) as not comprising contravention of clauses (1) and (2) of section 77 would be to construe the enactment so as not to serve but to defeat the very purpose for which it exists. Could it be that section 124(4) and 143 of the old Act were repealed by Parliament to enable candidate not to keep accounts at all or to keep incorrect or incomplete or unvouched accounts? If not, and it could not be in the face of the clear words in the re-enactment of section 77(1) and (2), then surely section 123(6) should apply to contravention of section 77 (1) and (2) as well as to contravention of Section 77(3). All these considerations alike converge to the conclusion that section 123(6) would attract contravention of any one of the three clauses in section 77.

86. The question of the interpretation of section 123(6) as to whether an omission to enter an item of expenditure incurred or authorised by the candidate in the account kept under section 77 would be a corrupt practice was raised before the Madras High Court in A.A.O. No. 42 of 1958 but their Lordships had not to, and did not, decide it as in the view they took of the facts there was no such omission. Learned counsel for the 1st respondent relied on two decisions reported in A.I.R. 1958 M.P. 236 and A.I.R. 1958 Allahabad 663 The Allahabad decision was on a writ petition under Article 226 of the Constitution, and the matter before their Lordship was the interpretation of para 4-D(d) of the election petition which ran as follows:

> "That respondent No. 1 did not keep any account of expenditure from day to day as prescribed by section 77 of the Representation of the People Act and the rules made thereunder and therefore the return filed by respondent No. 1 is fictitious and concocted. He has also not shown the correct account of expenditure incurred and authorised by him. This he has done to hide his corrupt practices. The return of election expenses filed by the respondent No. 1 prove all this".

The election petitioner contended before the Court below that this was an averment of a corrupt practice under section 123(6) and the opposite party that it attracts the application of section 100(1)(d)(iv) of the Act. The petitioner's contention found favour with the Tribunal and the opposite party approached the High Court, where both the parties repeated their respective contentions. The High Court was of opinion that the interpretation of neither party was correct and took the view:

> "The first two sentences of this paragraph are merely factual. What is stated in these two sentences is that the present petitioner did not comply with the requirements of section 77 of the Representation of the People Act and the Rules made thereunder and that the return

which he had filed did not show the correct account of the expenditure incurred and authorised by him as it contained fictitious and concocted entries.

Such an allegation cannot be held to amount to a corrupt practice under section 123(6) of the Representation of the People Act. Under that provision of law the corrupt practice consists in incurring or authorising expenditure in contravention of section 77 which can only happen if a candidate incurs or authorises expenditure in excess of the maximum amount allowable under the rules framed under section 77(3) of the Representation of the People Act." (at page 665).

It is clear that their Lordships merely assumed the point. They do not discuss the question nor adduce any argument in support of their view, probably because that particular aspect may not have been debated at the bar. In A.I.R. 158 M.P. 236 (K.C. Sharma V. Election Tribunal, Chattarpur) also the question arose before the High Court on a writ petition challenging an order passed by the election tribunal allowing an application for amendment of the election petition which contained allegations of corrupt practices included in three schedules, A, B and C "By the application for amendment the petitioner sought to introduce details of the corrupt practices in all the schedules". Their Lordships refused to interfere with the order observing:

"The Tribunal may be right or wrong in allowing or disallowing an amendment, but it acts with jurisdiction; and its discretion, if *prima facie* exercised, will not be interfered with by way of a writ petition and is a matter which may properly be taken in an appeal that may be filed against the final decision." (pp. 236, 237).

Then their Lordship say:

"We cannot leave this case without pointing out that in schedule 'C' attempt has been made to use the sixth sub-section of section 123 of the Representation of the People Act, 1951, for a purpose for which it is not meant".

and then proceed to consider the section and observe after reading section 123(6) of the Act:

"This does not mean that omissions in the accounts can be pointed out and the Election Tribunal is made to embark upon an enquiry as to what was actually spent or not. The practice of the accounts is really a matter for the Election Commission, though suppression of items of expenditure may result in the exceeding of the prescribed maximum.

Where instances are cited to show that the prescribed maximum has been exceeded, there may be a case under sub-section (3) of section 77 of the Act, but the words: 'the incurring or authorising of expenditure' do not lead to the application of sub-section (2) and sub-section (1) of section 77 in the context of an election petition."

The ground of the decision therefore is that the practice of the accounts is really a matter for the Election Commission and not for the Election Tribunal. This view, if I may say so with respect, appears to be opposed to the clear language of the Act and the rules and the decision of the Supreme Court in Sucheta Kripalani V. S. S. Dulat (A.I.R. 1955 Supreme Court 758):

87. The Election Commission is not at all concerned with section 77 or the accounts kept thereunder. The Commission is only concerned with the copy of those accounts lodged or not being lodged at all, as provided in Rule 134. When the account is lodged what the Commission can consider is provided for in clause (3) of Rule 134 and its consideration and decision is thereby confined to whether the contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and the Rules. The corresponding old Rule was 114(4) whose language, except changes made therein which are not relevant in this regard, is almost identical with the language of Rule 134(3). Their Lordships of the Supreme Court in Sucheta Kripalani's case, in considering the old Rule and the corresponding old sections with regard to the jurisdiction of the election tribunal and the election commission say at page 760:

"Section 76 of the Act requires every candidate to file a return of election expenses in a particular form containing certain prescribed particulars. The form and particulars are set out in the Rules. Section

143 prescribes the penalty for failure to observe the requirements. It is disqualification. This ensures if there is a "default" in making the return. It also ensues:

"If such a return is found.....upon the trial of an election petition under Part VI.....to be false in any material particular."

That places the matter beyond doubt. The trial of an election petition is conducted by an election tribunal and this section makes it incumbent on the tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations about-a-major are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under R.114(4) whether any candidate has, among other things,

'failed to lodge the return of election expenses .....in the manner required by the Act and these rules.'

*It is a question of form and not of substance* (underlining mine). If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the tribunal.

If the return is not in proper form, disqualification ensues but the Election Commission is invested with the power to remove the disqualification under Rule 114(6). If it does, the position becomes the same as it is would have been had the Election Commission decided that the form was proper in the first instance. That would still leave the question of falsity for determination by the tribunal in cases where the issue is properly raised."

88. Even if the expenditure is incurred for giving bribes to voters, it has to be entered in the account because section 77(1) which makes no reference to the purpose for which the expenditure was incurred except that it should be in connection with the election. The expenditure incurred in excess of the maximum prescribed should also be entered as section 77 provides for the entering in the account of *all* expenditure. The Election Commission cannot consider the propriety or legality of any item of expenditure authorized or incurred or take any action on any such ground. The Commission's jurisdiction is confined to considering whether the accounts had been lodged within time and whether they had been made up in the manner provided by the law. Default in this regard enables the Commission to so decide under Cl. (3) and notify under Cl. (4) the names of the defaulter under rule 134. This notified default would be a disqualification to a candidate under section 7(c) of the Act which arises on failure to *lodge* an account of election expenses within the *time* and in the *manner* required by or under this Act. Such disqualification may be removed by the Commission under Cl.(8) of rule 134. The Commission is not at all concerned with the practice as regards account in so far as it relates to the keeping of it or the purposes for which any expenditure is incurred or authorized or even whether the maximum prescribed has been exceeded or not. Whether there has been a contravention of the provisions. of section 77 in the matter of incurring or authorising expenditure is for the election tribunal to consider, and not for the Election Commission. Only contesting candidates need lodge accounts under section 78 whereas all candidates should keep accounts under section 77 and the corrupt practices of non-contesting candidates will in no way come to the notice of the Election Commission and will have to be dealt with by the tribunal in a recrimination when a further declaration under section 84 is claimed by or in favour of a non-contesting candidate.

89. *In Akshya Narayan* v. *Maheswar Bar* (A.I.R. 1958 Orissa 207) their Lordship observe at page 215:

"Doubtless if any item of expenditure was omitted altogether in the accounts that would be serious matter and may amount to a corrupt practice in as much there is a likelihood of the total expenditure for the election exceeding the amount prescribed. But so long as every item of expenditure is accounted for I do not think that the mere omission to mention the date on which each item of expenditure was actually incurred on behalf of the candidate by his workers, is such a serious irregularity as to amount to a corrupt practice".

90. The next question that has to be considered is whether there has been in this case any item of expenditure incurred or authorised by the 1st respondent which has not been included in his account of election expenses lodged under section 78, which are marked as Exhibits P-9(a), P-9(b) and P-9(c). In the particulars of amounts omitted to be included in the account, given by the petitioner in para 31-A seven items are mentioned for which he has made no attempt to prove the first three. The Secretary of the Tamil Nadu Congress Committee was examined by the respondent as his 1st witness. Not even a question was put to that witness by the petitioner in respect of the first three items which concern payment alleged to have been made by the respondent to the Tamil Nadu Congress Committee. The 1st respondent denies having made any such payment.

90. (a) The 4th item is as regards the car alleged to have been hired by the 1st respondent and brought from Bangalore. The petitioner swear that he relies upon the account of expenses lodged by the 1st respondent to prove this. There is nothing in those accounts to show that a car was hired and the expenses therefor not included. The 1st respondent denies having hired a car from Bangalore. Item 5 relates to the payment of hire charges for jutkas. In considering issue 17 I have found that the charge of hiring jutkas laid against the 1st respondent has not been proved.

91. The 6th item relates to the payment of printing charges, especially pamphlets printed in the Hindi Prachar Press, Madras. To prove this item the petitioner examined Shri Dattatroya, clerk of the Hindi Prachar Press, Madras, as his 1st witness. Exhibits P-1 to P-4, the order book and the printed leaflets were proved by him. The 1st respondent does not dispute having printed pamphlets in the Hindi Prachar Press, Madras. His case is only that the expenditure incurred by him in that behalf has been entered in the account and the voucher and bills submitted to the returning officer. The bills for printing charges sent by the Hindi Prachar Sabha are voucher Nos. 36 and 37 in Ex. P. 9(a). The total amount due thereunder, Rs. 83-8-0, is shown as outstanding due to be paid in his account of election expenses lodged [Exhibit P-9 (b)] at page 23 and at page 1 in his classified accounts, Ex. P-9(c). The expenses paid for printing other pamphlets, wall posters etc., have also been entered in the accounts and vouchers therefor produced.

92. The last and the 7th item remains to be considered, and that states that the expenses incurred for advertisement for canvassing votes by painting on walls in Dharampuri, Pennagaram, Papparapatti, Pallakode, Krishnagiri, Kaveripatnam and other places of major panchayat areas are not shown in the accounts. As already stated, that 1st respondent did not submit any answer by way of written statement to para 31-A. The petitioner adduced the following evidence on this item: The petitioner (P.W. 4, para 9) says that there were wall painting for canvassing for the 1st respondent in 200 places each costing Rs. 5|-. The cross-examination upon this is in para 21:

> "I do not know personally whether the 1st respondent placed orders for painting. I take no exception to the amounts entered in the account by the 1st respondent, as paid for specific purposes as mentioned in the accounts. My complaint is not that as regards paintings money was paid to the candidates to the Assembly but that money was paid to the painters direct."

Mohanram (P.W.5, para 7) says that he saw wall painting being made by Chandrasekhara Asari asking for votes for the 1st respondent with the Congress symbol, as in cross-examination (at para 12) he says that he met Chandrasekhara Asari with a view to engaging him to do his painting work——he was a competing candidate for the Krishnagiri Assembly Constituency——but was told that Asari had no time to spare, being busy with painting work for the 1st respondent. P. K. Ramamurti (P. W. 6) says "I have seen wall paintings with the Congress symbol canvassing for votes for the 1st respondent and support for the Congress. This was two weeks before the election." This withness was not cross-examined upon this point. Venugopal (P.W. 8) swears to have seen wall painting being made canvassing votes for the 1st respondent. In cross-examination (para 7 page 4), he says: "The painter belongs to Dharampuri. I have not mentioned about my having seen the paintings before to-day as no occasion arose therefor." Arunachalam (P.W.9) says that he had seen wall paintings for canvassing votes for the 1st respondent but that they contained only the name of the 1st respondent and not of any Assembly candidate. In cross-examination he says that he did not see the paintings being made and that he saw the painting on the wall of the Travellers' Bungalow (para 4) Abdul Sukkur (P.W.10) says that he has seen wall paintings appealing for support to the 1st respondent on the wall of the bus stand, on

the wall of Mittadar Zaheeruddin and of the Travellers' bungalow opposite thereto (para 2). In cross-examination he says:

> "I have not seen the paintings being made. There were wall paintings appealing for votes for other candidates with their respective symbols. The wall paintings may still be seen in certain places. The size of the paintings for the 1st respondent would be about 2 feet x 1 foot".

There is thus evidence of wall paintings being made for the purpose of securing votes for the 1st respondent. The stand taken by the 1st respondent as gatherable from his attitude in the matter of the cross-examination of the above witnesses and from his own evidence is that he does not deny that there have been wall paintings made in the interests of his election and on his behalf or that expenditure was not incurred by him in connection therewith but that such expenditure is actually entered in his account of election expenses. While examined as his 3rd witness the 1st respondent says in his examination in Chief (at page 9 para 15).

> "I have included in my account of election expenses the amount spent by me for making wall paintings of symbol, *viz.*, the 'Oxen'. On 18th February, 1957 the amount incurred is debited. The amount is Rs. fifty and it was paid to Appadurai. Voucher No. 16 is the voucher taken from him. The painting is a simple affair and is what is called a tin stencil. The painting is made by two tin stencils one for the symbol of Oxen of the file size, namely 12 inches by 8 inches and the other rectangular piece about 24 inches by four inches. The second rectangular piece contains my name. Rs. Fifty is all the expenditure incurred by me in this matter and I have entered it in my account. No other expenditure was either incurred or authorised by me in this regard."

In his cross-examination he states:

> "I paid Rs. fifty in all to Appadurai for making stencil painting. The amount includes both advance and final payment. I paid an advance and when the stencil was shown to me I paid the balance. It was a bargain for a lump sum and not so much a piece. Rs. fifty includes everything including preparation of the stencil. I did not ascertain in which of the towns and villages the prints were made. I saw the impressions only in Krishnagiri. My request was to put such impressions in all important towns in my constituency. He might have or might not have carried out my directions. I don't remember whether my second payment was after the work was finished or not. (Voucher Nos. 16 and 16 shown).
>
> *Question.*—I put it to you that these vouchers are for preparation of the tin stencil alone and do not include the paintings on the walls.
>
> *Answer.*—It is not so. The contract was for the execution of the entire work.
>
> *Question.*—I put it to you that paintings were made on walls on your behalf in all important towns apart from the stencil impressions and that you have omitted from your account of election expenses the expenditure incurred in that behalf.
>
> *Answer.*—I have included in my accounts all the expenditure incurred by me and I have not incurred or authorised any other expenditure.
>
> No paintings on walls apart from stencil impressions were made by me or at my instance or on my behalf".

93. The question is whether Rs 50/- entered by the 1st respondent in his account includes the expenditure for the wall paintings as claimed by him. If it does, there is no omission to enter an item of expenditure incurred. If it does not, there is. That wall paintings were made on his behalf as a part of the election propaganda is not denied. The argument of learned counsel for the 1st respondent that the petitioner has not been able to prove the quantum of the expenditure incurred in this behalf, and that unless the incurring of specific amount is proved it cannot be said that there has been an omission to enter in the account any expenditure incurred, cannot be accepted. When an item of work entailing expenditure is proved and, as in this case admitted, the burden of proving the quantum of that expenditure is on the 1st respondent who incurred the expenditure and got the work done. Section 92 of the Act makes the provisions of the

Indian Evidence Act, 1872 applicable to the trial of an election petition subject to the provisions of the Act. Section 93 of the Act provides an exception permitting reception of documents notwithstanding defects as to stamp and registration. In *Surendra Nath Khosla* V. *Dalip Singh* (1957 S. C. J. 162) at page 165 their Lordships says:

> "The contention further is that sections 101 and 102 of the Evidence Act must therefore apply and the burden must cast on the petitioner before the Tribunal to establish both the conditions before any relief could be granted to him. In our opinion, that argument does not advance the case of the appellant any more than what has been laid down by this Court in the cases referred to above. The other provisions of the Evidence Act including the rules of presumption must also be equally applicable".

Section 106 of the Evidence Act provides that "when any fact is specially within the knowledge of any person the burden of proving that fact is upon him". In this case the amount spent for the painting is a matter specially within the knowledge of the 1st respondent and he cannot escape the consequences of an omission to enter it in the account on the plea that the quantum of the expenditure has not been proved by the petitioner.

94. In the accounts Exhibit P-9(b) at page 9 occurs the entry about this on 18th February, 1957. It reads: "Appadurai Wall symbol on tin—Rs. 50/-." In the classified accounts Ex. P-9(c) at page 8 the entry reads thus: "B.R. Appadurai for making wall symbol on tin—18th February, 1957—cash—Rs. 50/-". The number of the voucher shown for this is 16. Ex. P-9(a) is the file of vouchers. There are two vouchers therein with number 16. One is dated 7th February 1957. It is in Tamil and reads:

"(*Podu therthal sambanthapatta mattu sinnamulla paint tagara boardu-gulukku* 105 *eluthukalin cooy ulpada bill varavu Rs.* 50/-. *Advance Rs.* 20/- *irupathu rupoi petrukonden*)", which may be translated as "tin stencils with pattern of symbol of oxen in connection with the general elections, inclusive of the charges for cutting 105 letters, Bill, Rs. 50/-. Received advance Rs. 20/-". There is another voucher No. 16 which is a stamped receipt for Rs. 30/-, "being the balance due for preparing stencil for purposes of election". (sd). Appadurai. The figure '5' in '105' looks like '5' at the top where the date is put as 7th February, 1957, though it appears to be different from the other two figures of '5' appearing in the voucher. The 1st respondent says that he ordered stencil in the shape of two boards, 12 inches by 9 inches for the symbol of oxen with yoke on, and 24 inches by 4 inches for his name. "Stencil" is "a plate of metal, etc. with pattern cut out which is impressed upon a surface by drawing a brush with colour over it," (Chambers's Twentieth Century Dectionary). The voucher refers to 'boards' in plural. The 105 letter cannot be on the board of the mentioned by the 1st respondent containing only his name. Reference must therefore be to a plurality of sets of boards, each containing the symbol and the name of the candidate. The argument of learned counsel that the word "paint" in the voucher means, "inclusive of the cost of painting on the walls" cannot be accepted because the voucher is for preparing 'boards' and "*paint tagara* board or" (survarotti sinnam) in the two vouchers is the translation of the word "stencil". The account is clear on this point.

95. The statute enjoins the obligation on a candidate to keep correct accounts and to procure and file vouchers for every item of expenditure incurred or authorized by him. There is a statutory conclusiveness attached to the vouchers and the accounts; the candidate is bound by and is not free to depart from their tenor. The 1st respondent cannot be heard to say nor can he be believed when he says that though the voucher and the account do not purport to include the cost of painting in the Rs. 50 debited on 18-2-1957, it does in fact include the cost of painting as well; the bargain was one for making the stencil and doing the paintings in all important towns in the Constituency and that the contractor might or might not have carried out his directions. A contract without a stipulation as to the number of places where the paintings should be done but leaving it to the discretion of the painter as the 1st respondent would have it is improbable as the parties had conflicting interests. It was the interest of the 1st respondent to have it in as many, and that of the painter, as few, places as possible. There is no question of its being reasonably sufficient or satisfying any normal standard Rs. 50 the expenditure entered in the account is all too small to cover the cost of tin boards, wages for cutting symbols, and 105 letters, expenses for travelling to and in the important towns in the whole constituency, price of paint and charges for

painting. It follows that the expenditure incurred by the 1st respondent for painting on the walls in connection with his election has been omitted to be included in the account kept by him that he failed to obtain vouchers there for, under clauses (1) and (2) of section 77 of the Act and that he contravened those provisions. I find therefore that the 1st respondent is guilty of a corrupt practice under section 123(6) of the Act I find no other than stencil paintings on the walls has been proved.

96. Another item of expenditure omitted to be included in the account has now to be considered and that arises out of the admission of the 1st respondent in the box. The petitioner adduced evidence implicating the 1st respondent in various items of corrupt practices on the 28th of February and 1st and 2nd of March at Krishnagiri. The 1st respondent attacked that evidence as absolutely false as he was on those days far away from Krishnagiri, in the Hosur area, where he had problems to attend to. He distinctly remembered his presence in the Hosur area on account of a telegram he sent to a friend of his at Madras to bring a car for purposes of his election and that an accident happened to that car. He said the whole of the week including the 1st and 2nd of March he was in the Hosur area, engaged in going to Bangalore to get Telugu speakers and in other activities on account particularly of the ill-health of Desai Venkatakrishnan the Assembly candidate who was working for him. In cross-examination he said as follows:

> "I sent telegram to my friend at Madras to come with his car on the 28th of February or the 1st of March. It was in connection with elections. I don't remember the particular telegraph office from which I sent the telegram. It is likely to be Hosur or Bangalore. It is not likely to be from Krishnagiri. I have included that expenditure in my account of election expenses. The telegrams sent by me in connection with elections are shown at page 12 of Exhibit P-9(b). The five telegrams mentioned therein are of the dates between 2nd February and 23rd February which is the latest, as is seen from the telegraph receipts which are vouchers Nos. 28 to 32 of Ex P-9(b). The first telegram was from Salem and the rest were from Krishnagiri. The telegram that I sent to my friend at Madras to bring his car is not in the above-mentioned file. I might have omitted to mention that telegram by oversight. The telegram also relates to my election."

This was on 5-2-1958 on which day the cross-examination was not completed and was continued the next day. In his re-examination the next day, the following question was put to him:

> Question.—Apart from inadvertance is there any other reason why the expenses for the telegram that you sent to your friend at Madras is not shown in the account of your election expenses?
>
> Answer.—There could be one or two possibilities. I might have used whatever stamps I had already in my possession or any reply telegraph form which I may have had, or someone may have paid for it and may not have brought the bill to me and asked for the money. It might be that cash might not have at the moment passed from my pocket. At that moment I was working at a great strain."

Learned counsel for the 1st respondent raises a preliminary objection to the tribunal considering this matter and also submits an answer on a question of fact as regards the omission. The answer is that on 7-1-1957 he has debited Rs. 25 for postage, that this amount does not represent postage but was amount for which postage stamps were purchased which were with him and that it was out of those that the stamps on the telegram on the 28th February were affixed and that was the reason why the expenditure for the telegram is not separately entered in the account as explained by the 1st respondent in his re-examination. In the first place there is no such statement made by the 1st respondent in re-examination. He says that "it might have been" from out of the stamp already in his possession, along with two other possibilities. The debit of Rs. 25 for postage on 7-1-1957 is not stated to be for purchase of stamps. If, as argued, the debit represents purchase of stamps for prospective use, it is only conversion of money into money's worth and would not be an item of expenditure unless the stamp purchased is actually used for the purpose of election. While in the box the 1st respondent did not connect the stamp which he said he may have had with the debit of Rs. 25 which he would have done had that been the fact, especially when he had sufficient time to think over the matter. Further, in view of the fact that for the five other telegrams he has filed receipts obtained from the Post Office as vouchers he would have filed the receipt for this telegram also as a voucher though no new entry of expenditure was required to be made had it been from out of the stamp

purchased for Rs. 25 which had already been debited. There was really no scope for re-examination. In cross-examination he has distinctly said that he might have omitted to mention that telegram by oversight. Omission to enter an item of expenditure by oversight might have been an excuse under the old Act because under section 124(4) whereunder, to amount to minor corrupt practice the return must be false, and if a return is incorrect on account of inadvertence it may not be false.

97. An admission of a party has surely to be taken as a whole. But the whole of the admission in this case is contained in the answers given by the 1st respondent in cross-examination which have already been extracted. What was said the next day in re-examination cannot be tacked on to the previous day's admission and even if it be tacked on it does not detract from the guilt of the 1st respondent because every one of the possibilities constitutes incurring of expenditure.

98. The preliminary point urged on behalf of the 1st respondent is that this matter cannot be considered as it is not averred in the petition, and reliance is placed on *Shiva Das* V. *Sheik Mohammad* (8 E.L.R.265) where the Election Tribunal, Allahabad disagreed with the decision in *Amritsar City Case* (Sen and Poddar 28) and hold that a corrupt practice not pleaded in the petition cannot be considered by a Tribunal though admitted by the respondent. The matter is considered by the Tribunal at page 285 and the grounds of their view are on that page stated to be those mentioned in their order dated 21st November, 1952, which is at page 291. The question considered by them in that order is whether fresh instances of corrupt or illegal practices could be introduced into the petition by amendment and they held that they could not be. An admission made by a party after the petition is filed in the course of the evidence at the trial is taken to amount to the introduction of a new instance of corrupt practice which in their view could not be done. This is opposed to the law laid down by the Supreme Court in *Harish Chandra's* case (A.I.R. 1957 Supreme Court 444). The Madras High Court, in A.I.R. 1958 Madras 187 (*M. A. M. Chettiar* V. *Saw. Ganesan*) with reference to this case observe: The principles that are to be deduced from the decision of the Supreme Court are: (p 193):

> "1. Section 83(2) and (3) of the original enactment lay down special rule applicable to charges of corrupt practice and the amendment of particulars regarding them. Where a charge of corrupt practice is made fresh instances of such corrupt practice might by way of amendment be added even after the period of limitation for the filling of a petition had elapsed, by reason of the use of the expression "at any time" in Sec. 83(3). Where, however, a new charge of corrupt practice, and not merely a fresh instance of an already formulated charge, is sought to be added, this would not be covered by section 83(3) and the jurisdiction to allow it would be dependent on the proper construction of Section 90(2) of the Act." (The rest are not relevant for our present purpose).

The introduction of a new instance of a corrupt practice is permissible. Evidence at the trial should be confined to corrupt practices pleaded in the petition in order that the opposite party might not be embarrassed and surprised at the trial and might know beforehand what case he has to meet. That rule has no application when a party himself admits a fact which constitutes a corrupt practice as in that case there can be no surprise or embarrassment. In the *Amritsar case* (Sen and Poddar 28) and the cases relied on therein, admissions of parties or agents in respect of corrupt practices not pleaded in the petition have been acted upon.

99. In *Sri Krishna* V. *Rajeshwar Singh* (12 E.L.R. 1) the Election Tribunal Bareilly, said:

> "The Tribunal is in any case not debarred from dealing with the matter when it has come before it in the admissions of respondent No. 1 himself". (at page 29.)

In *Mastram* V *Iqbal Singh* (12 E.L.R. 34), which was a case where there was no admission by the returned candidate of having committed corrupt practice, the learned chairman and members in considering the question whether corrupt practices not pleaded in the petition could at all be considered refer to a case of admission as an exception and in doing so refer to cases where admissions have been considered and those where they have not been. In my view an admission of the turned candidate of a fact or circumstances can be considered and if it constitutes a corrupt practice, the party admitting visited with the consequence thereof, notwithstanding the want of a pleading in that regard provided there is a charge

of a corrupt practice under a particular head pleaded in the petition and is being tried, and the admission is but one instance of that corrupt practice which can be introduced by amendment into the petition at any stage. That is the case here.

100. Learned counsel for the 1st respondent pointed out that the amount omitted to be included is small and at one stage asked the question whether twelve annas is going to upset an election. I recall what Justice Wills is reported to have said "that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void and that the return of a member is a serious matter and not to be lightly set aside." (2 O'M and H.201 at page 211, *Drogheda* case). I recall, too what their Lordships of the Supreme Court said and did in A.I.R. 1955 Supreme Court 610 (at page 628, para 9). Their Lordships set aside the order of the Election Tribunal dismissing the petition, struck off 12 out of the 13 charges therein for vagueness and remanded the petition for trial of the solitary charge that remained as also for trial on a question of disqualification which was not argued or brought to their notice by Counsel in their arguments but which their Lordships themselves noticed as having been raised in the petition. This was done in the interests of purity of elections notwithstanding the fact that three years and four months had run out after the election and there remained only a year and eight months.

101. Incuring or authorising of an expenditure in contravention of section 77 would be a corrupt practice irrespective of the quantum of the expenditure. When a maximum is fixed as under section 77(3), exceeding that maximum, albert by a *naya paisa*, would be a corrupt practice. The same rule applies to an omission of an item of expenditure from the accounts and to give particulars thereof under clauses (1) and (2) of section 77. The maxim, *de minimis non curat* lex has no application to such cases. I am aware that the maxim has been applied in an election case by Blackburn, J. to a charge of undue influence in *The North Norfolk case*—(1 O'M and H.236 at page 242). His Lordship said: "The maxim *de minimis non curat lex* applies to a considerable extent and in seeing whether there is undue influence from a threat of some loss, you should see whether the loss is really considerable or not and that the loss is not what a lawyer would call too remote",

102. Thus, the 1st respondent is guilty of a corrupt practice under section 123(6) of the Act in that he omitted, (1) to include in the account of his election expenses two items of expenditure incurred by him, (2) to mention particulars thereof and obtain vouchers therefore, and contravened the provisions of Section 77(1) and (2) of the Act.

103. For this reason I think I am bound to perform my statutory duty and declare the election of the 1st respondent void. I hereby declare that the election of the 1st respondent is void.

104. Learned Counsel for the 1st respondent drew my attention to clause (2) of section 100 of the Act under which the Tribunal under the conditions set forth therein may not declare an election void. I would have been happy to act upon that clause had the corrupt practice been committed not by the 1st respondent but by any of his agents, as the election of the 1st respondent has been in every other respect absolutely free from any other corrupt practice, but the corrupt practice found against the 1st respondent is one committed by himself, and the inevitable consequence of the declaration of his election void should follow.

105. The third relief is inappropriate in an election petition, as it is not an action at law or a suit in equity and the only two reliefs that can be asked for are shown in section 84 of the Act.

106. Costs: This election petition is perhaps a sample of what an election petition should not be. Wild, vague and extravagant allegations were made and aspersions cast against the 1st respondent, the Congress party, government servants and the State and Central Cabinets. No attempt was made to prove most of the charges. All but one of the various charges of corrupt practices attempted to be proved have been found to be not proven. The documents mentioned in the petition as sustaining the charges have been found to be either false or fictitious. Witnesses cited to prove particular facts as admitted by the petitioner have not been called. The specific charges in the petition have all been found against, except the one relating to the non-inclusion of the cost of wall paintings in the account. Though incurring of expenditure in excess of the maximum was charged against the 1st respondent, no attempt was made to prove it. The election of the 1st respondent has been found to be free from the many corrupt practices attributed against him. Under the circumstances, though I have to declare the election of the 1st respondent void, notwithstanding the smallness of the amount omitted to be included in the account of election expenses kept by him. I consider that this is a case where the ordinary rule that costs should follow the event should not be applied because though the 1st respondent has lost, the petitioner

has not won. Out of the two reliefs, the second, *viz.*, that the 2nd respondent should be declared duly elected, has been refused. I consider it proper and just in this case to direct and I hereby direct that the petitioner do pay an amount of Rs. 1000/- by way of costs to the 1st respondent and that that amount should bear interest at 3 per cent per annum from this date.

Dictated to the shorthand writer and after transcription by him corrected by me and pronounced had signed by me in open court this 30th day of September, 1958.

(Sd.) P. K. SUBRAMANIA AIYAR,
Member, Election Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADURAI-II, MADURAI.

PRESENT.—Shri P. K. Subramania Aiyar, B.A., B;L;, Retired Judge of T-C High Court and Member, Election Tribunal

*Tuesday, the 30th day of September, 1958*

ELECTION PETITION No. 149 OF 1957

M. G. Natesan Chettiar—*Petitioner*

*Versus*

C. R. Narasimhan and others—*Respondents.*

This petition having come on this day for final orders, the Tribunal made the following:—

ORDER

(Under Sec. 99 as regard Corrupt practices).

I just now passed final orders under section 98 of the Act in the above petition declaring the election of the 1st respondent void on account of a corrupt practice committed by him under section 123(6) of the Act. I pass this order under section 99 of the Act, there having been charges of corrupt practice in the petition. Except as aforesaid, no corrupt practice has been proved to have been committed by or with the consent of any candidate or his agent at the election.

Pronounced in open court, this 30th day of September, 1958;

(Sd.) P. K. SUBRAMANIA AIYAR
Member, Election Tribunal.

APPENDIX

E. P. No. 149 OF 1957

*List of Exhibits filed*

*For Petitioner* :

| | | |
|---|---|---|
| P-1 | 7-1-1957 | Order No. 22 of the order book maintained in the Hindi Prachar Press, Madras, regarding the order placed by 1st respondent. |
| P-2 | .. | Printed copy of pamphlet printed in the Hindi Prachar Press, Madras. |
| P-3 | .. | Another printed copy of pamphlet printed at do. with additional matter at its foot enclosed in square brackets in red pencil. |
| P-4 | 12-3-1957 | Order No. 212 of the order book maintained in the Hindi Prachar Press, Madras, regarding order for printing placed by 1st respondent. |
| P-5 | 22-1-1957 | Printed copy of pamphlet printed in Balu Achagam (Press) at Kaveripatnam. |
| P-6 | 4-3-1957 | Printed copy of pamphlet printed in do. press. |
| P-7 | 1-3-1957 | Printed copy of pamphlet published by Sri R. Appunnu on behalf of the 1st respondent. |
| P-8 | 4-2-1957 | Notification published in "Tamil Nadu" daily newspaper regarding the withdrawal of Sri G. D. Naidu form candidature (page 2). |
| P-9(*a*) | .. | Statement of election expenditure submitted by the 1st respondent to the Personal Assistant to the Collector of Salem and Returning Officer, Krishnagiri Parliamentary Consttuency (petrol Vouchers |

| | | |
|---|---|---|
| P-9(*b*) | .. | Statement of election expenses submitted by do to do (Journal). |
| P-9(*c*) | .. | Do. by do to do. (Classified summary of accounts). |
| P-10(*a*) to P-10(*gg*) | .. | 33 applications for postal ballot papers by polling personnel. |
| P-11 | .. | Register of applications for postal ballot papers. |
| P-12(*a*) | .. | Authenticated copies of electoral rolls of Hosur Assembly constituency comprised in Krishnagiri Parliamentary Constituency. (102 files) |
| P-12(*b*) | .. | Authenticated copies of electoral rolls of Uddanapalli Assembly Constituency comprised in Krishnagiri Parliamentary Constituency (134 files). |
| P-12(*c*) | .. | Do. of do of Krishnagiri Assembly Constituency (110 files). |
| P-12(*c*)(*i*) | .. | Serial Nos. 237 and 238 on one of the 110 files constituting Exhibit P-12(*c*). |
| P-12(*d*) | .. | Authenticated copies of electoral rolls of Dharmapuri Assembly Constituency (99 files). |
| P-12(*e*) | .. | Do. of do of Pennagaram Assembly constituency (116 files). |
| P-13 | .. | List of postal ballot papers sent to Military personnel with date of despatch and date of return extracted by counsel for both sides from the original register. |
| P-14 | .. | List of polling personnel who received their appointment orders on or after 25-2-1957 with acknowledgements, in respect of (1) Dharma puri, (2) Pennagaram, (3) Krishnagiri, (4) Uddanapalli and (5) Hosur Assembly constituencies. |
| P-15 | 31-1-1957 | Letter written by Desai Venkatakrishnan to P.M. Krishnaswami Naidu, Katnam, Bandepalli. |
| P-16 | .. | Printed copy of pamphlet issued by the 1st respondent with endorsement thereon made by Sri Desai Venkatakrishnan. |
| P-17 | 27-2-1957 | Letter written by M. Rama Reddi to P.M. Krishnaswami Naidu, Karnam, Bandepalli. |
| P-18 | 4-3-1957 | Copy of report given by Sri M. K. Subbaraman (P.W. 32) before the Presiding Officer. |
| P-19 | 6-3-1957 | Petition given by do to the Returning Officer of Krishnagiri Assembly Constituency (R.D.O. Hosur). |
| P-20 | 1-3-1957 | Original of Ex. P-7 written by Sri R. Appunnu. |
| P-21 | Do | Carbon copy of bill No. 418 showing a bill for Rs. 65-8-0 |
| P-22 | 4-3-1957 | Invitation card for the marriage of A.C. Krishnan with Rukma Bai at Bangalore-2. |
| P-23 | 26-7-1956 | Certified copy of deposition of D.W. 2 in O.S.No. 91/55 on the file of the District Munsif's Court, Krishnagiri. |
| P-24 | 4-2-1958 | Printed copy of notice issued by Dasaratha Chettiar for a wrestling contest. |
| P-25 | 3-2-1957 | Printed copy of pamphlet issued by A.V. Govindasami Naidu of Arasampatti. |
| | | *For 1st respondent.* |
| R-1 | .. | Printed copy of pamphlet showing the tour programme of the 2nd respondent Sri G.D. Naidu. |
| R-2 | .. | Printed copy of pamphlet with 'Elephant' symbol published by one D.M. Rama Goundar. |
| R-3 | 26-2-1957 | Printed copy of pamphlet with 'Elephant' symbol pulished by the Muslim League of Krishnagiri. |
| R-4 | 28-2-1957 | Printed copy of pamphlet with 'Sun' symbol published by Dravida Munnetra Kazhagam of Krishnagiri. |
| R-5 | 3-4-1957 | Copy of circular issued by Tamil Nad Congress Committee, Mount Road, Madras.-2. |
| R-6 | 6-4-1957 | Letter written by N. Muni Reddi (R. W. 2) to the President, Tamil Nad Congress Committee, Madras. |

| | | |
|---|---|---|
| R-7 | 8-4-1957 | Report sent by Sri R. Ramachandra Reddi, Congress candidate for the Hosur Assembly constituency to the Secretary, Tamil Nad Congress Committee, Madras. |
| R-8 | | Printed book of regulations (in English) issued by the Department for Legal Affairs, All India Congress Committee, New Delhi, containing instructions to Congress candidates standing for election. |
| R-9 | . | Printed book of regulations (in Tamil) published by do regarding do |
| R-10 | 9-2-1957 | Printed copy of pamphlet regarding the tour programme of Sri M Bhakthavatsalam, Madras, Minister, published by the Election Manager, District Congress, Salem. |
| R-11 | 2 3 1957 | Issue of "Viduthalai" Tamil daily showing appeal by Sri E. V. Ramaswami Naicker to support the 2nd respondent in the election (bottom of 1st page marked in red ink as square). |
| R-12 | 16-7-1956 | Certified copy of petition given by Govindan *alias* Mari to the Sub-Collector, Hosur. |
| R-13 | 25-7-1957 | Certified copy of petition given by Govindan *alias* Mari, to the Sub-Collector, Hosur requesting him to dismiss his petition against Bindhu Madhava Rao (R W 7), Karnam of Boghanapalli |
| R-14 | 6-8 1956 | Certified copy of statement given by Mari son of Thimmarayan of Dandeguppam before the Tahsildar, Krishnagiri |
| R-15 | 5-9-1956 | Certified copy of the cross-examination by Bindhu Madhava Rao (R.W 7) |
| R-16 | Do. | Certified copy of statement given by R.W. 7 before the Tahsildar Krishnagiri. |
| R-17 | 26-9-1956 | Certified copy of notice, Roc. B. 18157/56, sent by Sub Collectors Office, Hosur, to Mari |
| R-18 | 4-11 1956 | Typed copy of petition addressed to the Sub-Collector, Hosur |
| R-19 | 5 9-1956 | Certified copy of statement given by Periana Goundar beofe the Tahsildar, Krishnagiri |
| R-20 | 31 12 56 | Pages 73 to 87 of the Minutes Book of the Kaveripatnam Co-operative Town Bank Ltd , |
| R-21 | | Attendance register maintained by the Kaveripatnam Co-operative Town Bank Ltd., from October 1956 to September, 1957 |
| R-22 | 28-2-1957 | Attendance register for Masters maintained in the Board High School Kaveripatnam |
| R-23 | 11 6-1956 to 31-12-1957 | Attendance register for pupils maintained in the Board High School (Forms VI to IV.) |
| R-24(*a*) | .. | List of holidays for High Schools under Salem District Board management for the year 1956-57. |
| R-24(*b*) | .. | Do. of do. for the year 1057-58. |

*List of witnesses examined.*

*For Petitioner*

1 Sri R Dattatreya
2 Sri Chinnathambi
3 Sri T A V Nathan
4 Sri M G Natesa Chettiar (Petitioner)
5 Sri N Mohanram
6 Sri P K Ramamurti
7 Sri Dharmalingam.
8 Sri Venugopal
9. Sri Arunachalam.
10 Sri Abdul Sukkur
11 Sri M A Tirupathi
12 Sri Chinnathambi *alias* Rangaswami
13 Sri Periathambi *alias* Munisami
14 Sri Ramaswami *alias* Kunji
15 Sri Subramanian.
16 Sri Govinda Rao,

*For Petitioner*

17 Sri Nayak Ramaswami.
18 Sri Syed Imam.
19 Sri Noordin Ahmed.
20 Sri Rajmuddin.
21 Sri Periaswami.
22 Sri Basu Sahib.
23 Sri Absa
24 Sri Santhu Sahib.
25 Sri Gorey Sahib
26 Sri Usman Sahib
27 Sri Mamooth Khan
28 Sri Krishnaswami Naidu

*For 1st respondent*

1 Sri N E Raghunathan
2 Sri N Muni Reddi
3 Sri C R Narasimhan (1st respondent)
4 Sri J C Venkatachalapathi Chetti
5 Sri M Munisami
6 Sri P T Venkatachari
7 Sri T V. Bindhu Madhava Rao
8 Sri V M Ramabadhran Chettiar
9 Sri Jaya Rao
10 Sri A V Pachayappa Chettiar
29. Sri Sheik Rahiman.
30 Sri K T Govindan
31 Sri S K Perumal.
32 Sri M. N Subbaraman.
33 Sri K P Varadarajan.
34 Sri G. R. Mohanram.
35 Sri Govindan
36 Sri V R Thangavelu
37 Sri P Thimmarayan
38 Sri P. N Kuppuswami Naidu
39 Sri A C Ramachandra Chetti
40 Sri K T Venkatachala Naidu
41 Sri C Venkatachala Naidu.
42 Sri C Raja Chettiar

11 Sri Kulandayappa Chettiar
12 Sri S Nagaraja Maniagar
13 Sri D S Subramania Aiyar
14 Sri P K Dasaratharama Chettiar
15 Sri S R Narayana Aiyar.
16 Sri S Rengaswami Chettiar
17 Sri Ramachandra Rao
18 Sri T V Ranganatha Rao
19 Sri Rangier

(Sd P K SUBRAMANIA AIYAR,
Member, Election Tribunal.

ANNEXURE I

BEFORE THE ELECTION TRIBUNAL, MADURAI-II

ELECTION PETITION No 149 *of* 1947

I A No 2 of 1958

C R Narasimhan—*Petitioner/1st respondent*

*Versus*

M G Natesan Chettiar—*Respondent/Petitioner.*

Petition presented under section 151 and Order XIV Rule 5 of the Code of Civil Procedure

For the reason stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to amend issue No 12 as follows —

> "Whether the one hundred and forty votes mentioned in exhibit B are votes of dead persons, and if so, how many of them were cast in favour of the 1st respondent and whether this has materially affected the result of the Election"

(Sd) K. NARASIMHA AYYENGAR,
(Sd) K. LAKSHMANARASIMHAN,
Advocate

*Dated the 8th January,* 1958

BEFORE THE ELECTION TRIBUNAL MADURAI-II

ELECTION PETITION No 149 OF 1957

(I A No 2 OF 1958)

C R Narasimhan—*Petitioner/1st respondent.*

*Versus*

M G Natesan Chettiar—*Respondent/Petitioner*

AFFIDAVIT FILED BY THE PETITIONER

I, C. R. Narasimhan, son of C. Rajagopalachariar, aged 49, residing at Bazulullah Road, Madras 17, do hereby solemnly and sincerely affirm and state as follows:—

1. I am the petitioner herein.

2. Issue No. 12 in the case as framed now runs thus:—

"whether votes in the names of dead persons were cast in favour of the 1st respondent; if so how many? Whether this has materially affected the result of the Election".

In paragraph 36 of the petition, allegations with reference to dead votes have been made and a list of 140 names of dead persons were given and a general and vague allegation that more dead votes were also cast.

3. I have stated in paragraph 36 of my counter that I do not admit that the 140 persons named were either dead or that they cast their votes in my favour. I stated that even assuming that they were so cast, it could not materially affect the result of the Election. I now find that the respondent by sending and asking for some election lists, is attempting to enlarge the number of dead persons and thereby seeking to enlarge the scope of the enquiry and create a sort of prejudice.

4. I am advised that mere casting of dead votes is not a corrupt practice and would not come under purview of Section 90(5) of the Representation of People Act and within the jurisdiction of this Hon'ble Court. Instances of this kind must be alleged within the time allowed for presenting the Election Petition.

5 I have also categorically pleaded in paragraph 26 of my counter statement that as per relevant provisions of law, the petitioner (therein) cannot be allowed to add to the number listed in Ex. B which should therefore be taken as the final and maximum number.

6 An opportunity to determine the number in the course of the trial by sending for papers and then trying to find out what the number is, is something not falling within the scope of an Election Tribunal's Enquiry and would be in the nature of a roving inquisition into the defects supposed or real and would considerably harass a sitting member (successful candidate) and tend to protract and delay the trial enormously.

7. Assuming for purposes of argument that a considerable number of dead votes were cast, it would still be necessary to find out the persons to whom they voted and scrutinise all the ballot papers of both the 1st respondent and the 2nd respondent in the election petition to see if the result of the election has been materially affected.

8. I am advised that it is better and desirable to clarify the issue No. 12 by limiting it to the number of persons given in the petition itself and not to extend it beyond.

9. It is therefore necessary in the interests of Justice that issue No. 12 should be recast as prayed for by me in my petition.

(Sd.) C. R. NARASIMHAN,

Petitioner/1st respondent.

Solemnly affirmed and signed before me at Madurai.

(Sd.) M. A. SUNDARARAJAN, Village Munsif.

Sattamangalam.

*Dated the 6th January*, 1958.

ANNEXURE II

BEFORE THE ELECTION TRIBUNAL, MADURAI II.

ELECTION PETITION NO. 149 OF 1957.

I.A. No. 2 of 1958

C. R. Narasimhan—*Petitioner/1st respondent.*

*Versus.*

M. G. Natesan Chettiar—*Respondent/Petitioner.*

COUNTER-AFFIDAVIT FILED BY THE RESPONDENT IN THE AFFIDAVIT:—

I, M. G. Natesan Chettiar, son of M. V. Gurunathan Chettiar, Landlord, Hindu, Vaniya Vaisia, aged about 57 years, residing at Dharmapuri, do hereby solemnly affirm and state as follows:—

1. I am the respondent in this petition.

2. The petition is unsustainable and the petitioner is not entitled to any relief.

3. The issue No. 12 which has originally been framed is correct and proper, and there are absolutely no grounds for amending the issue.

4. So far as the votes in the name of dead persons which are mentioned by me in para 36 of my petition as having polled by personation I have made it very clear that only a few of the names of dead persons (about 140 and odd) have been given in the list.

5. I have made a definite allegation that such recording of invalid votes which are in the name of dead persons have materially affected the result of the election.

6. The first erspondent has been declared elected as it was that he got 367 votes more than the 2nd respondent. The petitioner wants to prove that a fairly large number for exceeding 367 votes of persons who are dead have been polled and recorded in favour of first respondent. From the nature of the contention that the list given by me is only some of the votes of the dead persons recorded in favour of the first respondent it should be considered that it is only provisional and evidence will have to be let in in respect of the fairly large number of votes of dead person polled far above 367 votes for proving my case.

7. The allegations in para 3 of the petitioner's affidavit that I am seeking to enlarge the scope of the enquiry and creating a sort of prejudice by proving a large number of votes of dead persons which have been recorded are not correct and true.

8 The allegations contained in para 4 of the affidavit are wrong and unsustainable. The casting of votes which are in the name of dead persons certainly comes within the Jurisdiction of this Tribunal in as much as such votes are invalid and opposed to law and must be excluded.

9 The allegation contained in para 5 of the petitioner's affidavit that I cannot be allowed to add to the number metioned in the list and that it should be taken as final and maximum number is wrong and unsustainable. From the nature of the contentions and also the evidence which will have to be let in in this case we have necessarily to find out whether the actual number of votes in the name of dead persons polled exceeds 367 and under such circumstances the contention that the petitioner cannot be allowed to add to the number listed in the petition is unsustainable.

10. The allegations in para 6 of the affidavit are wrong and misconceived. The election Tribunal has Jurisdiction to determine in the course of the trial by sending for the necessary papers and finding out how many invalid votes are recorded and such a procedure cannot at all be called a roving enquiry. The allegation that such procedure is harassing and tend to protract the delay of the trial si baseless and not tenable.

11. The allegation in para 7 is wrong and introduces a new contention which was not raised in the counter statement of the first respondent by way of recrimination. The allegation that the ballot papers of the 2nd respondent also should be scrutinised to see if dead votes have been polled in his favour is absolutely wrong and clearly unsustainable.

12. In any view there is absolutely no ground for amending the issue No. 12 as prayed for by the petitioner.

It is, therefore, just and necessary that this Honourable Tribunal should be pleased to dismiss the petition with costs.

(Sd.) M. G. NATESAN.

Solemnly affirmed and signed before me on 16th January, 1958 at Dharmapuri.

(Sd.) B. N. MUNI RAMAN, Advocate.

*Dated the 16th January, 1958.*

ANNEXURE III

IN THE COURT OF THE ELECTION TRIBUNAL, MADURAI II

I. A. No. 4 OF 1958

IN

ELECTION PETITION NO. 149 OF 1957.

M. G. Natesan Chettiar—*Petitioner.*

*versus*

C. R. Narasimhan—1*st respondent.*

*Petition humbly presented under Rule 138 of the Conduct of Election and Election Petition Rules of 1956 on behalf of the abovenamed petitioner.*

Most respectfully showeth:

1. That for the purpose of proving that there has been polling of invalid votes the final list of 1957 for all the State Assembly Constituencies have been summoned.

2. The final lists of 1957 contain the number of the voters who are to be deleted from the list of 1956 which has been used for the election held on 4th March, 1957.

3. The final list shows the number in the electoral roll of the persons whose names should have been deleted either because they are dead or for some other reason before the election was held on 4th March 1957. To find out that votes have been polled by personation in respect of the persons who were dead before the date of election whose names should have been deleted before the election was actually held, it is necessary that the marked copies of the electoral rolls should be compared with the final list of voters for the year 1957.

It is therefore prayed that this Hon'ble Tribunal should be pleased to open the marked list of voters and order the inspection of the same for the purpose of comparing it with the final list of 1957.

(Sd.) P. RANGASWAMI NAIDU,

MADURAI;
*Dated 10th January*, 1958. Advocate for the Petitioner.

BEFORE THE ELECTION TRIBUNAL, MADURAI II

ELECTION PETITION NO. 149 OF 1957.

**I. A. No. 4 OF 1958**

Sri M. G. Natesan Chettiar—*Petitioner.*

*Versus.*

Sri C. R. Narasimhan and others—*Respondents.*

AFFIDAVIT FILED BY THE AFORESAID PETITIONER:

I, M. G. Natesan Chettiar, son of M. V. Gurunathan Chettiar, Landlord, Hindu, Vaniavaisya, aged about 57 years, residing at Dharmapuri, do hereby solemnly affirm and state as follows:—

1. I am the petitioner herein.

2. One of the grounds mentioned by me in my petition in para. 36 of the petition is that a large number of votes in the names of dead persons were cast by persons who personated them and that were cast in favour of the first respondent. Out of these large number of votes a few of the votes cast in the abovesaid manner have been mentioned in a list attached to my petition and marked Ex. B.

3. The list which was available at the time of the election contained only the amendments (including deletion list) upto 1st March, 1956.

4. For the purpose of proving that the result of the election has been materially affected by the polling of a large number of invalid votes in favour of the 1st respondent it is necessary first of all to find out who are the persons who have voted in the election and this can be found out only from the marked list of electoral roll showing the voters who actually voted in the election.

5. The marked list will have to be compared with the final list of the year 1957 containing the deletions to be made for the year 1957 (*i.e.*) upto 1st March 1957 and it is only by such comparison that we will be in a position to find out which persons who are in the deletion list but still whose votes have been polled. Then we can easily find out the votes of the persons who were dead and which have been polled.

6. For the purpose of facilitating the leading of evidence with regard to the polling of votes in the names of dead persons it is necessary in the first instance to know who are the persons who voted, and for this, we have to look into the marked list of electoral roll.

7. It is, therefore, just and necessary that this Honourable Tribunal should be pleased to order the opening of the marked list of electoral roll and permit the inspection of the same.

(Sd.) M. G. NATESAN,

Solemnly affirmed and signed before me on 16th January 1958 at Dharmapuri.

(Sd.) B. N. MUNI RAMAN, Advocate.

16*th January* 1958.

ANNEXURE IV

BEFORE THE ELECTION TRIBUNAL, MADURAI II

I. A. No. 4 OF 1958

IN

ELECTION PETITION NO. 149 OF 1957

M. G. Natesan Chettiar—*Petitioner.*

*Versus.*

C. R. Narasimhan—1*st Respondent.*

Counter affidavit filed by the 1st respondent abovenamed showeth I, C. R. Narasimhan, son of Sri C. Rajagopalachariar, aged 49, residing at No. 60 Bezullullah Road, Madras-17, do hereby solemnly affirm and sincerely state as follows:

1. The marked list should be allowed to be inspected only after the petitioner puts forward a specific case as to the individuals who are dead and when they died on information on which the petitioner is able to get that a third party has voted.

2. Under the Election Rules, there are several safeguards to prevent votes being cast in the names of dead persons.

3. The Polling Officers are supplied with copies of various electoral lists and a supplemental list available upto the date of the polling.

4. Polling Officers are assisted by identifying officers of the locality. They are expected to know whether a voter who demands a ballot paper is the man who is entitled to vote or not and whether the voter specified in the list is alive or not on the date of voting.

5. Polling Agents of candidates are expected to have with them the electoral list and the names of persons who are dead at the time of the polling to know if any false personation is made or not. Provision has been made to challenge such voter. So far, on the score of death, there is no challenged vote.

6. The petitioner cannot be allowed to look into the marked lists before he actually states who are the voters who are dead and if so, when, before finding out whether such a vote is cast or not. To permit the petitioner to inspect the marked list now would be giving him a chance to make a roving enquiry and then state his case. The petitioner must be asked to specify the names of persons who are dead, the dates of their death, by means of a petition for amendment of the pleadings because each dead vote referred is an illegality and therefore must be averred and particularised. The inspection of the marked list would only become relevant thereafter. The lists should be allowed to be inspected for proving a state case and not for the petitioner to state a case.

7. The inspection asked for is now premature and without proper foundation or necessity and has therefore to be rejected.

(Sd.) C. R. NARASIMHAN, 1st respondent.

Solemnly affirmed and signed before me on 19th January 1958 at Madurai.

Sd/-

ADVOCATE.

*The 19th January* 1958.

ANNEXURE V

BEFORE THE ELECTION TRIBUNAL, MADURAI-II, MADURAI

PRESENT:

Shri P. K. Subramania Aiyar, B.A., B.L., Retired Judge of the Travancore-Cochin High Court and Member, Election Tribunal.

*Monday, the 24th day of February*, 1958.

INTERLOCUTORY APPLICATION No. 2 OF 1958.

IN

ELECTION PETITION No. 149 OF 1957.

*Between*:—

C. R. Narasimhan—*Petitioner/1st respondent.*

*And*:—

M. G. Natesan Chettiar—*Respondent/Petitioner.*

Application dated 8th January, 1958 by the petitioner for amendment of 12th issue.

This application coming on for final hearing this day before me, in the presence of Sri K. Narasimha Ayyangar, Advocate for the petitioner and of Shri P. Rangaswami Naidu, Advocate for the respondent, the Court passed the following.

ORDER

This is an application by the 1st respondent to amend issue No. 12 which asks "whether votes in the names of dead persons were cast in favour of the 1st respondent; if so, how many. Whether this has materially affected the result of the election". The amendment proposed is "whether the 140 votes mentioned in Ex. B are votes of dead persons and if so, how many of them were cast in favour of the 1st respondent and whether this has materially affected the result of the election". Parties submitted draft issues and the Tribunal settled issues not

accepting the draft submitted but slightly differently in certain respects. Issues were settled on the 14th October 1957. On 25th October, 1957 it was ordered that if either party wants any addition to or alternation of issues as settled by the Tribunal an application in that behalf should be made which will be considered on 7th November, 1957. The petitioner in the E. P. filed an application to amend the issues (I. A. No. 4 of 1957). But the 1st respondent filed none within that time. Oral evidence on behalf of the petitioner was began to be recorded on 16th December, 1957. In the course of the trial an omission to frame an issue on a matter of controversy was pointed out by the learned counsel for the 1st respondent and issue No. 17 was framed as additional issue on 17th December, 1957. The petitioner summoned for and got produced lists of the annual revision of the votes, voters list and marked copy of the electoral roll. This application for amendment of the 12th issue was on the eve of the use of those papers by the petitioner for the purpose of leading his evidence. The question turns on the construction of paragraph 36 of the election petition which reads "the petitioner states that a large number of votes in the names of dead persons were cast by persons who personated them and they were cast in favour of the 1st respondent. Out of these large number of votes the petitioner filed herewith a list marked Ex. B of a few votes cast in the name of dead persons. This also materially affected the result of the election". The construction on the basis of which the 12th issue was framed by the Tribunal is that, votes were tendered for the 1st respondent by personation in such numbers as would affect the majority secured by him and that that circumstance by itself affected the result of the election. The construction that is contended for on behalf of the 1st respondent is that though the 1st sentence in that paragraph refers to a large number of votes by personation that number is limited to 140 mentioned in Ex. B referred to in the second sentence and the third sentence which says "this also materially affected the result of the election" only means that the votes given by false personation, that is, those mentioned in Ex. B along with other invalid votes mentioned in other paragraphs of the petition materially affected the result of the election.

2. The petitioner challanges the election of the returned candidate—the 1st respondent—on account of corrupt practices and also on the ground that the result of the election has been materially affected by non-compliance with the rules under the Act. The narration of charges of corrupt practices is made in paragraphs 12 to 32 and from the 33rd paragraph the narration of non-compliance with the rules under the Act commences. That paragraph states that the result of the election has been materially affected and recalls the fact already mentioned regarding the non-compliance with rule 44. The next paragraph 34 mentions another non-compliance and is wound up by saying that this also has materially affected the result of the election. The 35th Paragraph refers to yet another non-compliance with the rules and that is wound up by the sentence there was non-compliance with the rules in this regard also and this materially affected the result of the election'. The 36th paragraph is the one which falls to be construed now. The 37th paragraph refers to personation of 5 absentee voters. There is no statement therein that that circumstance has affected the result of the election. It is thus clear that what the petitioner intended to convey was that each of the circumstances mentioned in paragraphs 33, 34, 35 and 36 independently affected the result of the election in that each one of those would reduce the votes secured by the 1st respondent to an extent in excess 367 which is the difference in the votes secured by respondents 1 and 2. That was not the case as regards the five votes mentioned in paragraph 37 as that was a specific number and cannot by itself affect the result of the election and there is the absence of the mention of its having materially affected the result of the election as we find in the earlier paragraphs. Learned counsel for the 1st respondent—petitioner cites dictionary meaning of the word 'also' as 'in addition' or 'besides'. This meaning would exclude other things and indicate the independence of the thing in question. It is clear from the petition that what was averaged was not that the result of the election was affected materially on account of the cumulative effect of the various charges mentioned in paragraphs 33 to 36 but that the effect of the reasons mentioned in those paragraphs each by itself and independently affected the result of the election. The case for a cumulative construction is not in the writen defence (paragraph 26) which states that the number should be limited to that shown in Ex. B which is far smaller than the difference between the votes secured by respondents 1 and 2, and that there is no meaning in saying that the personation complained of in paragraph 36 affected the result of the election. It appears to me that the proper construction of the petition would be to regard the averment regarding false personation as not confined to the number mentioned in Ex. B but going beyond it to an extent sufficient to cancel the majority secured by the 1st respondent and render the majority in favour of the second respondent. In this view the petition has

to be dismissed as issue 12 does not stand in need of any amendment. Issue No. 13 refers to the averment in paragraph 37 of the petition. The last portion of it 'and whether this has materially affected the result of the election' should not be there and should have been inserted by mistake. These words will be deleted from that issue. I make no order for costs.

Pronounced by me in open court, this the 24th day of February, 1958

(Sd.) P. K. SUBRAMANIA AIYAR,
Member, Election Tribunal.

True copy

(Sd.) Member, Election Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADURAI-II AT MADURAI

PRESENT:

Shri P. K. Subramania Aiyar, B.A., B.L., Retired Judge of T-C. High Court and Member, Election Tribunal.

*Monday, the 24th day of February, 1958.*

INTERLOCUTORY APPLICATION NO. 2 OF 1958.
IN
ELECTION PETITION NO. 149 OF 1957.

*Between:*

C. R. Narasimhan, son of Sri C. Rajagopalachari, residing at Basullah Road, Madras-17—*Petitioner* (*1st respondent*).

*And:*—

M. G. Natesa Chattiar, son of M. V. Gurunathan Chettiar, residing at Dharamapuri, Salem District—*Respondent* (*Petitioner*).

Application dated 8th January, 1958 by the petitioner for amendment of issue No. 12 in the manner mentioned therein.

ORDER

This application having been heard finally this day; upon perusing the petition, the affidavit filed in support thereof, the counter-affidavit of the respondent and other material papers in the case, and upon hearing the argument of Sri K. Narasimha Ayyanger, Advocate for the petitioner and of Sri P. Rangaswami Naidu, Advocate for the respondent, *IT IS ORDERED* as follows:—

(1) that the petition be, and hereby is, dismissed;

(2) that the last portion of issue No. 13 reading "and whether this has materially affected the result of the election", be, and hereby is, deleted;

(3) that there be no order for costs of the petition.

Given under my hand and the seal of the Court, this 24th day of February, 1958.

(Sd.) P. K. SUBRAMANIAN AIYER,
Member, Election Tribunal.

*February*, 1958.

True Copy.

True copy

(Sd.) Member, Election Tribunal.

ANNEXURE VI

BEFORE THE ELECTION TRIBUNAL, MADURI-II, MADURI.

PRESENT:

Shri P. K. Subramania Aiyer, B.A., B.L., Retired Judge of the Travancore-Cochin, High Court and Member, Election Tribunal.

*Monday, the 24th day of February*, 1958.

INTERLOCUTORY APPLICATION No. 4 OF 1958

IN

ELECTION PETITION No. 149 OF 1957.

*Between*:—

M. G. Natesa Chettiar—*Petitioner* (*Petitioner*)

*And*:—

C. R. Narasimhan—*Respondent* (*1st respondent*)

Application dated 10-1-1958 by the petitioner for opening the marked list of voters and order the inspection of the same.

This application coming on for final hearing this day, before me, in the presence of Sri P. Rangaswami Naidu, Advocate for the petitioner and of Sri K. Narasimha Ayyangar, Advocate for the respondent, the Court passed the following:

ORDER

This is an application by the election petitioner for a direction of the Tribunal for opening the marked list of voters produced before this Tribunal by the concerned officers at the petitioner's instance. Such lists concerning the numbers contained in Ex. B to the election petition were already opened on account and examined and notes made by both parties as to the numbers who get ballot papers. This application, therefore, relates now to only the other lists which has yet to be opened. The purpose for which opening is asked for is that otherwise it would involve an endless and unnecessary labour to prove the petitioner's averment in paragraph 36 of his petition. What is relevant is only the death of persons before the date of the poll who have tendered votes. Who those persons are can be ascertained by a reference to the marked list. It is only if persons who have tendered votes could not have tendered votes on account of their previous death as averred in para 36 of the petition that votes will become void and will be a ground for avoiding the election if their number is sufficient to efface the balance in favour of the returned candidate. One ground for declaring the election of a returned candidate void is "reception of any vote which is void" under section 100(I)(d)(iii). The reception of a void vote would be a ground for declaring the election void only if the result of the election in so far as it concerns a returned candidate has been materially affected. The election would be materially affected so far as the returned candidate is concerned only if the void votes in his box are so numerous that by the good ones he would not have secured a majority of votes. The first step in the course of proof of this ground is therefore to see who voted and who among them are dead before the date of the poll. The marked list of electors shows the electors who obtained ballot papers for voting. Rule 138 of the rules framed under the Representation of People's Act provides that the marked list of ballot papers may be opened only under the order of a competent Court of Tribunal. To facilitate proof of the averment made in the petition and avoid unnecessary delay, waste of labour, and money, I consider it proper to direct that the marked list of voters be opened in the presence of the Tribunal and the numbers who have obtained ballot papers be intimated to the parties as was done in the case of electors mentioned in Ex. B to the petition and I order accordingly. I make no orders as regards costs.

Pronounced by me in open court, this the 24th day of February, 1958.

(Sd.) P. K. SUBRAMANIA AIYER,

Member, Election Tribunal.

True copy

(Sd.) Member, Election Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADURAI-II AT MADURAI

PRESENT:

Shri P. K. Subramania Aiyar, B.A., B.L., Retired Judge of T. C. High Court and Member, Election Tribunal.

*Monday, the 24th day of February, 1958*

INTERLOCUTORY APPLICATION No. 4 OF 1958

IN

ELECTION PETITION No. 149 OF 1957.

*Between*:

M. S. Natesa Chettiar, son of M. V. Gurunathan Chettiar, residing at Dharamapuri, Salem District—*Petitioner* (*Petitioner*).

*And*:

C. R. Narasimhan, son of Sri C. Rajagopalachari, residing at Bazlullah Road, Madras-17—*Respondent* (*1st respondent*).

Application dated 10-1-1958 by the petitioner for opening the marked lists of voters and inspecting the same, for the purpose of comparing it with the final list of 1957.

ORDER

This petition having been heard this day; upon persuing the petition, the affidavit filed in support thereof, the counter-affidavit of the respondent and other material papers in he case; and upon hearing the arguments of Sri P. Ranga-swami Naidu, Advocate for the petitioner and of Sri K. Narasimha Aiyangar, Advocate for the respondent, IT IS ORDERED that the marked lists of voters be opened in the presence of the tribunal and the numbers who have obtained ballot papers be intimated to the parties as was done in the case of electors mentioned in Exhibit B to the petition, and that there be no order as regards costs of this petition.

Given under my hand and the seal of the Court, this 24th day of February, 1958.

(Sd.) P. K. SUBRAMANIA AIYER,
Member, Election Tribunal.

True copy

(Sd.) Member, Election Tribunal.

ANNEXURE VII

IN THE HIGH COURT OF JUDICATURE AT MADRAS.
(*Special Original Jurisdiction*)

W. P. No. OF 1958.

C. R. Narasimhan—*Petitioner.*

*Versus*

1. The Election-Tribunal, Madurai-II, Madurai.

2. M. G. Natesan Chettiar—*Respondents.*

PETITION UNDER ART. 226 OF THE CONSTITUTION OF INDIA.

For the reasons set out in the accompanying affidavit, the petitioner prays that this Hon'ble Court be pleased to call for the records in I.A. Nos. 2 and 4 of 1958 in Election Petition No. 149 of 1957 and issue a writ of *certiorari* or other appropriate writ quashing the orders of the first respondent dated 24th February, 1958.

*Dated at Madras this day of March*, 1958.

Counsel for the Petitioner.

True copy

(Sd.) Member, Election Tribunal.

ANNEXURE VIII

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

(Special Original Jurisdiction)

W. P. No. OF 1957

C. R. Narasimhan—*Petitioner.*

*Versus*

1. The Election Tribunal, Madurai-II, Madurai.
2. M. G. Natesan Chettiar—*Respondents.*

PETITION UNDER ART. 226 OF THE CONSTITUTION OF INDIA

For the reasons set out in the accompanying affidavit, the petitioner prays that this Hon'ble Court be pleased to issue a writ of *mandamus* or other appropriate writ directing the first respondent, the Tribunal, in so far as it pertains to issue No. 12 in Election Petition No. 149 of 1957, to confine itself to evidence let in, in respect of the 140 names mentioned in Exhibit (B) annexed to the election petition, and not to permit evidence regarding others not so mentioned being let in.

Dated at Madras this day of March, 1958.

Counsel for Petitioner.

ANNEXURE IX

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C. R. Narasimhan—*Petitioner.*

*Versus*

1. The Election Tribunal, Madurai-II, Madurai.
2. M. G. Natesan Chettiar—*Respondents.*

AFFIDAVIT OF C. R. NARASIMHAN

I, C. R. Narasimhan, son of C. Rajagopalachariar, aged 49 residing at Bazullah Road, Madras-17, do hereby solemnly and sincerely affirm and state as follows:

1. I am the petitioner herein and I am well acquainted with the facts.

2 I stood for election as a Congress Candidate to the Parliament from the KRISHNAGIRI CONSTITUENCY in the General Elections held in March, 1957. I was declared duly elected on 8th March, 1957. The second respondent herein is a voter in the constituency. He filed election petition 149 of 1957 impugning my election. And the said petition is now being tried by the first respondent Tribunal (hereinafter referred to as the Tribunal).

3. I may state that the second respondent has filed the petition not only questioning my election but also seeking the further declaration that one of the defeated candidates who secured the next largest number of votes, to wit, Mr. G. D. Naidu, be declared elected in my place.

4. The election petition contains a large number of allegations against me, mostly of a vague and general character. I filed my written statement duly traversing all the charges and the Tribunal framed issues on 14th October 1957. The examination of the election petitioner's witnesses as well as mine are nearly complete. I am now compelled to invoke the jurisdiction of this Hon'ble Court as the Tribunal is about to exceed its jurisdiction while trying one of the issues. The threatened excess of jurisdiction arises in the following manner.

5. One of the allegations in the petition filed by the second respondent is contained in paragraph 33 of the election petition which runs as under:

> "The petitioner states that large number of votes in the name of dead persons were cast by persons who personated them and they were

cast in favour of the first respondent. Out of these large number of votes, the petitioner files herewith a list marked Exhibit (B) of a few voters cast in the names of dead persons. This also materially affected the result of the election.

I traversed this charge in paragraph 26 of my written statement which runs as follows:

"It is curious how the petitioner is able to state in the petition that the votes of dead persons listed in Exhibit (B) were all cast in favour of this respondent. If indeed the votes of persons not in existence had been polled by unknown impersonators, it is strange that the petitioner should be in a position to state categorically that every one of the illegal votes was cast in favour of this respondent, a statement which could be made only if the petitioner had means of knowing how and by whom the illegal votes were cast. This respondent denies that the large number of votes in the name of the dead persons or absent persons were cast in his favour and puts the petitioner to strict proof of the allegations. In any event, this respondent states that the result of the election cannot be said to be materially affected even as it is."

Among the issues framed by the Tribunal, the issue No. 12 which deals with the said allegation and which alone is relevant for our present purpose is as follows:

"Were the votes in the names of dead persons cast in favour of the first respondent? If so how many? Whether this has materially affected the result of the election."

6 When evidence in the election petition was being let in, I found the second respondent was attempting to lead the Tribunal to undertake a roving or fishing enquiry by calling for the electoral rolls pertaining to the entire constituency covering about 3,50,000 voters and then try to see how many of them were dead or voted I may add that the second respondent also sought to compare the electoral rolls with an amendment list prepared subsequent to the date of election and which naturally would include deaths subsequent to the date of election, in order to see if he can pitch upon any instance in his endeavour to establish any defects. Such a procedure besides being most protracted and burdensome is also not to be permitted as it amounts to employing the process of court to make out a case that was not alleged and thereby to prejudice a sitting member. I may add that even a month ago when the Tribunal asked the second respondent to get at least TEN dead certificates to establish the death of some among the 140, whose names had been given in the petition, the second respondent was unable to do so and brought only two certificates which were also not sufficient to identify any individual and which related to deaths long ago. On a comparison with the marked copy of the electoral roll, it was also found that forty among those whose names were given in Schedule (B) to the election petition, did not exercise their franchise at all. I am mentioning this only to show that that the allegations made by the second respondent in his election petition were made recklessly and he is finding it difficult to establish the case which he had alleged in the petition. I may add that no allegation is made in the petition that any of the alleged dead votes were procured by me, and no challenges were made or recorded at the time of the polling. The petitioner, fighting the case of a defeated candidate nor through his agents challenged any vote as having been improperly received and launch an enquiry now after the election is all over. The candidate's laches cannot be overcome by a more voter being made to file an election petition and certainly not by seeking to intervene long after the period of limitation. The second respondent, I submit, is now endeavouring to try and make out a case that was not alleged in the petition by undertaking a roving investigation of the entire constituency rolls running to over 3,50,000 names.

7. I thereupon filed I.A. No. 2 of 1958 before the Tribunal, seeking to amend the issue No. 12 so as to make it more particular and thereby avoid the Tribunal exceed in its jurisdiction by allowing evidence relating to facts not definitely alleged in the election petition. In I.A. 2 of 1958, I prayed that issue No. 12 in the election petition should be amended to run as follows:

"Whether the 140 votes mentioned in Exhibit (B) are votes of dead persons and if so how many of them were cast in favour of the first respondent and whether those materially affected the result of the election."

By its order dated 24th February, 1958, the Tribunal refused to amend the said issue. At the same time, the second respondent had filed I.A. 4/58 seeking direction from the Tribunal to open the marked list of votes in respect of the entire constituency. This application of the second respondent was allowed and it is against those orders that I am preferring writ petitions before this Hon'ble Court.

8. I respectfully submit that the orders of the Tribunal are vitiated by error apparent on the face of the record and have to be questioned by *certiorari*. I also submit that the Tribunal's usurpation of jurisdiction in disregard of the provisions of election law should be restrained by appropriate writ of *mandamus*. My reasons in respect of my submissions are as follows:

(i) Under Section 81 of the Representation of the People's Act, an election petition has to be presented within 45 days from the date of the election. There is therefore a statutory period of limitation prescribed and the vested right of a sitting member is not to be disturbed by charges brought beyond the period of limitation. Section 83 of the Act enjoins on a person seeking to impugn an election to set out full particulars of any corrupt practice that he alleges in the election petition and also give a concise statement of material facts relied on Setion 90(5) of the Act enables the Tribunal to permit amplification or amendment of particulars regarding corrupt practice subject to such amendment not having the effect of introducing particulars of a corrupt practice not previously alleged in the petition. It is note worthy that no power or amendment or amplification is granted in the Act in respect of allegations not amounting to corrupt practices so that such allegations when once made in the petition cannot be amplified or amended at any later stage in the proceedings. The allegation that votes were cast in the names of dead voters, does not amount to a corrupt practice in election law by reason of receipt of amendments to the Act. Such an allegation becomes relevant in the trial of an election petition only under 10C(1)(d)(iii) which enables the Tribunal to avoid an election which has been materially affected by the improper reception of any vote which is void. In the instant case, the second respondent had alleged in the election petition that 140 votes *inter alia* were void as being those of dead persons and he had also furnished their names in Schedule (B) to the election petition. Though he made a general allegation, he had confined himself in the petition, which was presented within the period of limitation to 140 names. As this was not a matter coming under any corrupt practice, no question of any amplification or addition to these names can arise and I had also stated this in my written statement. The Tribunal's enquiry should in law therefore be confined to the investigation of the allegations as contained in the petition presented within the period of limitation. To permit the second respondent to lead evidence or enable the second respondent to fish for evidence over and obove the 140 names contained in the original petition, would be tentamount to setting at naught my valuable right acquired under the rule of limitation contained in Section 81 of the Act. The Tribunal by not agreeing to confine itself to the 140 names mentioned in the petition is opening the doors wide to the second respondent to lead any evidence he wants, going beyond the 140 names mentioned. This amounts to erroneous assumption of jurisdiction as it enables the second respondent to try and make out a case which he had not in mind when he filed the election petition.

(ii) The second respondent cannot be permitted to take shelter behind a vague and general allegation. The tendering of each void vote is a separate instance in respect of which material facts such as the name of the impersonated voter, have to be specifically pleaded within the period of limitation The Tribunal's interpretation of the election petition is unwarranted and puts a premium on vagueness when the entire basis of election law is that fullest particulars are necessary.

(iii) The Tribunal failed to appreciate that an investigation of the dimensions contemplated by the second respondent and allowed by it may also work irreparable injustice to me in the following manner;

When the second respondent seeks to find out how many dead votes were cast in the entire constituency he wants to avoid investigating how many votes were polled by the candidate whose case the second respondent is fighting. Having attempted to set forth in his petition, particulars of 140 votes (which number could obviously never affect the result of the election in view of the difference between the candidates) the second respondent led me to lose my valuable right of recrimination and he cannot at this late stage be allowed to raise a new case.

(iv) The Tribunal failed to appreciate that the second respondent who had not made out his case in respect of the 140 names alleged in the petition, was

only trying to harass and embarrass me by embarking on an almost limitless enquiry. The Tribunal should have appreciated that the charge made by the second respondent has already been proved to be reckless, for, 40 of the 140 names never voted and the Tribunal ought not to have encouraged further waste of time by the second respondent in trying to get evidence pertaining to names not at all mentioned.

(v) The Tribunal ought to have seen that failure to restrict the second respondent to evidence relating to the 140 names mentioned in the petition, would be tantamount to granting an amendment of the election petition at this late stage by the addition of fresh names, which as I have submitted already, would be against the rule of limitation. The Tribunal in this regard has totally failed to consider the recent observations of this Hon'ble Court in Muthiah Chettiar *Vs.* Sa. Ganesan (1958-1-MLJ), where a Division Bench of this Hon'ble Court had occasion to consider the scope of an amendment to an election petition after the period of limitation. In the said judgment, this Hon'ble Court has also expressed doubts whether it would be open to an election petition to make a general and vague charge within the period of limitation and seek to amplify it later on in the course of the trial. The Tribunal is not applying the principles laid down in the said Judgment of this Hon'ble Court which had delineated the jurisdiction of the Tribunal in such matters, has gone wrong in law and is thereby threatening to exceed its jurisdiction.

9. I respectfully submit that the substantial injustice to me, caused by the Tribunal's acting in excess of its jurisdiction cannot be remedied otherwise than by the interference of this Hon'ble Court under Art. 226 of the Constitution, and hence it is that I respectfully pray that it would be just and necessary for writs of *mandamus* and *certiorari* to issue from this Hon'ble Court to the Tribunal.

10. It is also just and necessary that pending the disposal of the writ petition, the Tribunal should be restrained by an interim injunction from proceeding to let in any evidence or permit any proceedings to be taken in respect of issue 12 in Election Petition 149 of 1957. I am not however asking for stay of the trial of the election petition regarding other issues and in respect of other matters, the trial may go on. But if stay of proceedings in respect of issue 12 alone is not granted, I will be put to a great deal of loss of time and money on what I have submitted would be a roving enquiry without jurisdiction.

Solemnly affirmed this

SECOND day of March, 1958

at Madras.

Before me,

Identified by me.

Advocate, High Court.

Advocate for Petitioner

ANNEXURE X

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the First day of August,

One thousand nine hundred and fifty-eight

(10th Sravana, 1880—Saka)

PRESENT

The Honourable Mr. Justice Balakrishna Ayyar.

WRIT PETITION NOS. 182 AND 183 OF 1958

C. R. Narasimhan—*Petitioner in both.*

Vs

1. The Election Tribunal, Madurai II, Madurai.

2. M. G. Natesan Chettiar—*Respondents in both.*

*W. P. No. 182 of 1958.*

Petition under Art. 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a writ of Mandamus directing the 1st respondent the Tribunal in so far as it pertains to issue No. 12 in Election Petition No. 149 of 1957, to confine itself to evidence let in, in respect of the 140 names mentioned in Exhibit (B) annexed to the election petition and referred to in para. 5 of the affidavit and not to permit evidence regarding others not so mentioned being let in.

*W. P. No. 183 of 1958.*

Petition praying that in the circumstances stated therein and in the affidavit filed with W.P. No. 182 of 1958 on the file of the High Court, the High Court will be pleased to call for the records in I.A. Nos. 2 and 4 of 1958 in Election Petition No. 149 of 1957 on the file of the 1st respondent and to issue a writ of certiorari quashing the order of the 1st respondent dated 24th February, 1958.

These petitions coming on for hearing, on Monday the 28th day of July 1958 upon perusing the petitions and the affidavit filed with W.P. No. 182 of 1958 on the file of the High Court, the order of the High Court dated 4th May, 1958 and made therein and the counter affidavits filed herein and the records in E.P. No. 149 of 1957 and in I.A. Nos. 2 and 4 of 1958 in the said E.P. No. 149 of 1957 and comprised in the return of the 1st respondent to the writs made by the High Court and upon hearing the arguments of Mr. V. P. Raman, Advocate for the petitioner in both the petitions and of Mr. C. S. Swaminathan, Advocate for the 2nd respondent in both the petitions and the case having stood over for consideration till this day, the Court made the following:—

ORDER

In March, 1957 an election was held in the parliamentary constituency of Krishnagiri in Salem District. The polling took place on the 4th of the month and on the 8th the Returning Officer announced that Mr. C. R. Narasimhan had been elected by a majority of 367 votes. On 17th April, 1957 Mr. M. G. Natesan Chettiar, a voter in the constituency, filed Election Petition No. 149 of 1957 challenging the election of Mr. Narasimhan on various grounds.

In these writ petitions we are concerned only with the allegations contained in paragraph 36 of the Election Petition which runs as follows:—

> "The petitioner states that large number of votes in the name of dead persons were cast by persons who personated them and they were cast in favour of the first respondent. Out of these large number of votes, the petitioner files herewith a list marked Exhibit (B) of a few voters cast in the names of dead persons. This also materially affected the result of the election."

In the list which the petitioner marked as Exhibit B, he set out the names of 140 persons who according to him had died before the polling day. He also alleged that the votes which belonged to these dead persons had been cast in favour of Mr. Narasimhan.

In the counter which Mr. Narasimhan filed he traversed all these allegations of Mr. Natesan Chettiar and went on to say,

> "It is curious how the petitioner is able to state in the petition that the votes of dead persons listed in Exhibit (B) were all cast in favour of this respondent. If indeed the the votes of persons not in existence had been polled by unknown impersonators, it is strange that the petitioner should be in a position to state categorically that every one of the illegal votes was cast in favour of this respondent, a statement which could be made only if the petitioner had means of knowing how and by whom the illegal votes were cast. This respondent denies that the large number of votes in the name of the dead persons or absent persons were cast in his favour and puts the petitioner to strict proof of the allegations. In any event, this respondent states that the result of the election cannot be said to be materially affected even as it is."

On this part of the case the Tribunal framed issue No. 12 which reads:

> "Were the votes in the names of dead persons cast in favour of the first respondent? If so how many? Whether this has materially affected the result of the election?"

It will be noticed that this issue is very wide in its scope and Mr. Natesan Chettiar sought to take advantage of this amplitude in order to show that persons whose names were not included in Ex. B had died before the date of the poll and that the votes which belonged to these dead persons had been cast in favour of Mr. Narasimhan. Thereupon Mr. Narasimhan filed on 8th January, 1958 I.A. No. 2 of 1958 before the Tribunal asking that Issue No. 12 be amended in such a manner that the enquiry would be limited to the 140 persons mentioned in Ex. B. On 10th January, 1958 Mr. Natesan Chettiar filed I.A. No. 4 of 1958 for a direction from the Tribunal to open the marked list of voters which had been produced before the Tribunal by the concerned officers at the instance of Mr. Natesan Chettiar. Mr. Natesan Chettiar wanted to utilise the marked list as one step in proof of his charge that votes which belonged to dead persons and whose names were not in Ex. B had been cast in favour of Mr. Narasimhan.

On 24th February, 1958 the Tribunal passed orders dismissing I.A. No. 2 of 1958 and allowing I.A. No. 4 of 1958.

These petitions have been filed for the issue of appropriate writs directing the Tribunal to confine itself to the 140 names mentioned in Ex. B and quashing the orders passed in I.A. Nos. 2 and 4 of 1958.

The short point for determination now is whether Mr. Natesan Chettiar is entitled to show that persons whose names do not appear in Ex. B had died before the date of the poll and that their votes had been cast in favour of Mr. Narasimhan. It is obvious that if Mr. Natesan Chettiar is not entitled to do so, the Tribunal should be required to confine its enquiry to the names mentioned in Ex. B.

Mr. Swaminatha Ayyar the learned Advocate for Mr. Natesan Chettiar contended that he is entitled to travel beyond Ex. B and lead evidence in respect of persons whose names are not in the list. To support this contention of his he referred to the decision of the Supreme Court in *Harish Chandra V. Triloki Singh* *(1). In that case the election petitioner wanted to add further instances of corrupt or illegal practices which he attributed to the returned candidate and the question was whether he was entitled to do so. On page 450 Venkatarama Ayyar, J., posed this question:

> "Is it open to the Tribunal acting under this provision [Section 83(3)] to direct new instances of the corrupt practices to be added to the list?" And he proceeded: "It is contended by the learned Solicitor General on behalf of the appellants that Section 83(3) does not authorise the inclusion of new instances of corrupt practices, and that all that could be ordered under that provision was giving of fuller particulars in respect of instances given in the petition."

On this Venkatarama Ayyar, J., observed:

> "We are unable to agree with this contention. In our opinion, Section 81(1) and Section 83, sub-sections (1) and (2), when correctly understood, support the contention of the respondent that the Tribunal has authority to allow an amendment even when that involves inclusion of new instances, provided they relate to a charge contained in the petition. If the grounds on which an election is sought to be set aside are something other than the commission of corrupt or illegal practices, as for example, when it is stated that the nomination had been wrongly accepted or that the returned candidate was not entitled to stand for election, then Section 83(2) has no application, and the requirements of Section 83(1) are satisfied when the facts relating to those objections are stated."

When reading this decision it is necessary to bear in mind that it was given under the Representation of the People Act as it stood before it was amended in 1956. Now, if we look into this Act as it stood then we find that it makes an important difference between corrupt or illegal practices and the other grounds or circumstances on the basis of which an election is sought to be avoided. Section 83 as it stood before its amendment in 1956 ran as follows:

> "Section 83. Contents of petition.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner

*(1) A.I.R. 1957 Supreme Court (444).

*(1) A.I.R. 1957 Supreme Court (444).

relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act of V of 1908), for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition.

The first sub-section requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Sub-section (2) directs that the petition shall be accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges. The third sub-section empowers the Tribunal to "allow the particulars included in the said list to be amended" or order further and better particulars to be furnished. Without struining language an addition may be described as an amendment. It will therefore be appreciated that sub-section (3) of Section 83 clearly empowered additions to be made to the list of corrupt or illegal practices furnished under sub-section (2). But that sub-section does not permit additions to be made to "the material facts" referred to in sub-section (1) of Section 83. Impersonation of Voters, alive or dead, is not a corrupt practice as defined in the Act—*vide* sections 123 and 124. The decision of the Supreme Court cannot therefore be called in aid to support the contention that additions can be made to the allegation made in an election petition when they do not relate to corrupt or illegal practices.

The amendment made to the Act in 1956 has not altered this position.

Clause (a) of sub-section (1) of Section 83 as it stands now requiries that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Clause (b) requires that the election petition should set forth full particulars of any corrupt practice that the petitioner alleges. The word "illegal" is left out and the petitioner is not required to furnish a list as the Act before it was amended required. Sub section (8) of Section 90 empowers the Tribunal to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. But the Tribunal is not to allow

"any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition".

The petition therefore is this. When a petition is sought to be amended in respect of matters which do not relate to a corrupt practice the powers of the Tribunal are exactly the same as that of a civil court when it tries a suit. That is because sub-section (1) of Section 90 provides that subject to the provisions of the Act and the rules made thereunder, every election petition shall be tried as nearly as may be, in accordance with the procedure laid down by the Code of Civil Procedure for the trial of suits.

Mr. Swaminatha Ayyar argued that an election petitioner is required to give only "a concise statement of the material facts" on which he relies and that it is sufficient for him to allege in general terms that votes which belonged to dead persons have been cast in favour of the returned candidate, and that he is not bound to give any list at all of persons who according to the petitioner has been impersonated. Provided he adds the averment that the result of the election has been materially affected thereby the petitioner can wait till witnesses are called before he furnishes any names.

I am unable to agree. Because, apart from every other consideration that a procedure would enable an election petitioner to take the returned candidate by surprise. Besides it would make a fair trial impracticable. If, when the trial commences, a witness is put into the box who says that X.Y. whose name has been ticked off in the marked copy of the electoral roll had died before the date

on which the polling took place, how can the returned candidate rebut it? In order to give him a reasonable opportunity of rebutting such evidence he must have time to make enquiries in the village or locality where the person alleged to be dead was living. It may be that after he completes his enquiry he will be able to show that the person was not really dead, but very much alive. If the names of the persons who are alleged to be dead are not furnished will in advance of the date of hearing of the petition, every time a witness on behalf of the election petitioner alleges that a particular person had died before the date of the poll the hearing will have to be adjourned to enable the returned candidate to make enquiries in order that he may rebut the allegation of the witness. It will be at once perceived that an intolerable state of things would inevitably result and no election petition can ever end.

Mr. Swaminatha Ayyar explained that in order to rebut the evidence of a witness who says that a particular voter had died before the date of the poll it is not necessary for the returned candidate to have facilities to make enquiries. He can look into what is called the "deletion list" and from there find out whether a particular voter was alive or dead.

It may be explained here that what is called the "deletion list" is a list of names prepared by the officers charged with the duty of bringing electoral rolls up-to-date, wherein is shown the names of persons which have to be removed from the electoral list as it previously stood. I do not consider that the procedure suggested by Mr. Swaminatha Ayyar would be sufficient. In the first place deletion lists may and frequently do contain errors. And numerous ones too. In the second place, deletion lists are not always corrected up to the date on which the polling takes place. They often give the state of the electoral roll as on a subsequent date, and as Mr. V. P. Raman explained, the voter may have died between the date on which the polling took place and the date on which the deletion list was finally prepared.

When we read section 83 again, we find that it requires an election petition to contain a concise statement of the material facts on which the petitioner relies. A general allegation that there has been impersonation of dead voters does not appear to me to be a sufficient compliance with the requirements of the section. Obviously it is necessary that the facts should be stated in such manner that the opposite side can know what the case is that it is called upon to meet. Details and particulars reasonably definite and sufficient in scope to give the opposite side a fair and legitimate chance of answering them must be furnished. The trial of an election petition is not like a wrestling match with no holds barred. It is pretty much like the trial of a civil suit. If therefore the allegation is made that there has been impersonation, the name of the person who is said to have been impersonated must be furnished. And this must be done if not in the petition itself and at the outset then certainly before the period of limitation expires. Thereafter new names cannot be added or included in the election petition.

I am fortified in this conclusion by the decision of a Bench of this Court in *H.A. Muthiah Chettiar* V. *S. A. Ganesan* [1958. (1) M. L. J.] In that case the decision of the Supreme Court which I have referred to above was fully considered. On page 118 Rajagopala Ayyangar, J., stated the legal position as follows:

> "The principles that are to be deduced from the decision of the Supreme Court are: (1) Section 83(2) and (3) of the original enactment lay down a special rule applicable to charges of corrupt practice and the amendment of particulars regarding them. Where a charge of corrupt practice is made fresh instances of such corrupt practice might by way of amendment, be added even after the period of limitation for the filing of a petition had elapsed, by reason of the use of the expression "at any time" in section 83(3). Where, however, a new charge of corrupt practice, and not merely a fresh instance of an already formulated charge is sought to be added, this would not be covered by section 85(3) and the jurisdiction to allow it would be dependent on the proper construction of section 90(2) of the Act. (2) In cases not covered by section 83(2) and 83(3), that is, in relation to grounds for the avoidance of an election resting on reasons other than charges of corrupt practice, there being no special rule governing the permissible amendments, the matter is governed by the provisions of section 90(2) of the Act, which render the provisions of the Civil Procedure Code applicable to the trial of suits to the trial of the election petitions.

The power of the Tribunal to order an amendment by invoking the provisions of Order 6, rule 17, is subject to this limitation prescribed by section 81. Where, therefore, by an amendment a party applying for it, seeks to allege a new fact and not merely to explain or clarify a material fact already stated, as a ground for setting aside the election, the same cannot be allowed if the application is made after the period prescribed by section 61 for filling a petition had elapsed.

Mr. Kumaramangelam, learned counsel for the respondent, urged that the Act by section 83(1)(a) merely required the petition to contain a concise statement of the material facts on which the petitioner relied. He urged that if in the present case, the respondent had stated that the petitioner was disqualified from standing for election by reason of his interest in a contract or contracts falling within section 7(d) of the Act, without specifying or identifying the contract or contracts, the election petition would have still conferred to the requirements of the Act, and that if, by reason of this vagueness, the petitioner had thereafter required particulars to be furnished of the contracts, the respondent could have furnished them within the time limited by the Tribunal. If he was right so far, learned counsel urged that the respondent ought not to be prejudiced merely because he furnished one instance of such a contract. We feel unable to uphold these contentions. In the first place, the election petition did not contain any general statement which could cover contracts other than the one specified in it. We doubt whether an allegation in general terms, such as the one suggested by learned counsel for the respondent, would have satisfied the requirements of section 83(1) which required that an election petition should state "the material facts" on which the petitioner relied for the relief that he sought.

In these circumstances we entertain no doubt that by the amendment the respondent was seeking to add fresh grounds of disqualification, since each of the new contracts was separate and constituted a distinct ground of disqualification. This the Tribunal had no jurisdiction to allow after the period of limitation prescribed by section 81 had elapsed".

In the result, therefore, the election petitioner was not permitted to show that the returned candidate was disqualified by reason of the fact that he was interested in contracts which were not specified in the original petition.

In the present case, the election petitioner is proposing to do some thing even more comprehensive. He does not say; that after he filed his election petition he has discovered other specific cases of impersonation. What he wants is that the marked copy of the electoral roll and the deletion list should be checked in order that it may be ascertained how many votes that belonged to dead persons had been cast. The matter is not even one in which the petitioner seeks to furnish new particulars; it is a case of his inviting the Tribunal to go upon a fishing expedition with him. That cannot be allowed.

In the result, both these writ petitions are allowed. Directions will issue to the Tribunal requiring it to confine itself to the 140 names enumerated in Ex. B, and, quashing its orders in I.A. Nos. 2 and 4 of 1958.

The petitioner will get his costs in both petitions. Advocate's fee Rs. 250. One set.

MEMORANDUM OF COSTS

W.P. 182 OF 1958.

| | Rs. | nP. |
|---|---|---|
| *Petitioner's costs* | | |
| Stamp for vakalatnama | 3 | 00 |
| Do. used for the petition | 3 | 00 |
| Do. for do. of allowed in W.P. 183/58 | 25 | 00 |
| Value of copy stamp paper used for enclosures | 0 | 00 |
| Advocate's fee | 0 | 00 |
| Batta and postage | 250 | 00 |
| Translation and Printing charges | 2 | 87 |
| | 0 | 00 |
| To be paid to the petitioner by the 2nd respondent | 280 | 87 |

MEMORANDUM of COSTS.

W.P. 183 OF 1958.

| | Rs. | nP. |
|---|---|---|
| *Petitioner's costs.* | | |
| Stamp for vakalatnama | 3 | 00 |
| Do. used for the petition | 25 | 00 |
| Do. for do. of the Election Tribunal's Orders | 3 | 00 |
| Value of copy stamp paper used for enclosures | 0 | 00 |
| Advocate's fee allowed in W.P. 182/58 | 0 | 00 |
| Batta and postage allowed in W.P. 182/58 | 0 | 00 |
| Translation and printing charges | 0 | 00 |
| To be paid to the petitioner by the 2nd respondent | 31 | 00 |

Sd. R. NAGHAVANDRA RAO,
Assistant Registrar (Appellate side).
Sd.- S. VEERARAGHAVACHARI, 8-8-1958
Sub Assistant Registrar (Appellate side.)

BALAKRISHNA AYYAR,
Member
Election Tribunal, Madurai-II.

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

W. P. No. 182 OF 1958

C. R. Narasimhan—*Petitioner.*

*Vs.*

1. The Election Tribunal, Madurai-II, Madurai.
2. M. G. Natesan Chettiar—*Respondents.*

Petition praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a Writ of *Mandamus* directing the 1st respondent herein in so far as it relates to issue No. 12 in Election Petition No. 149 of 1957, to confine itself to evidence let in, in respect of the 140 Names mentioned in Exhibit B annexed to the Election Petition and referred to in paragraph 5 of the affidavit and not to permit evidence regarding others not so mentioned being let in. Whereas by order dated 24th February, 1958 in I.A. No. 4 of 1958 on the file of the Election Tribunal, Madurai II at Madurai the said election Tribunal, Madurai II Madurai the 1st respondent herein directed the inclusion of Names other than the 140 Names mentioned in Exhibit B annexed to the said Election Petition No. 149 of 1957 on its file and whereas the Petitioner herein has requested the said Election Tribunal to amend issue No. 12 so as to confine itself to the names in the said Exhibit B and whereas the said Tribunal has neglected and failed and refused so to do, the Election Tribunal Madurai II at Madurai the 1st respondent HEREIN IS HEREBY DIRECTED to confine itself to the 140 names enumerated in Exhibit B annexed to the Election Petition No. 149 of 1957 on its file.

WITNESS THE HONOURABLE MR P V RAJAMMANNAR, Chief Justice of the High Court of Judicature at Madras this 1st day of August One thousand nine hundred and fifty eight

(Sd ) R RAGHAVENDRA RAO

Assistant Registrar,

Appellate side

WRIT OF CERTIORARI ORDER ABSOLUTE

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

*Friday, the first day of August,* 1958

WRIT PETITION No 183 OF 1958

C R Narasimhan *Petitioner*

1 The Election Tribunal, Maduari II Madurai

2 M G Natesan Chettiar—*Respondents.*

These Writ Petitions coming on Monday the 28th day of July 1958 for further consideration in the presence of the Honourable Mr Justice Balakrishna Ayyar, upon perusing the records in Election Petition No 149 of 1957 and the records in I A Nos 2 and 4 of 1958 in the said E P No 149 of 1957 on the file of the 1st respondent herein comprised in the return of the said 1st respondent to the Writs made by the High Court and upon hearing the arguments of Mr V. P Raman, Advocate for the Petitioner in both the petitions and of Mr C S Swaminathan, Advocate for the Respondent in both the petitions and having stood over for consideration till this day IT IS ORDERED AS FOLLOWS —

1 That the Rule Nisi issued by order of the High Court dated 4th March, 1958 be and hereby is made absolute and that the order dated 24th February, 1958 and made in I A Nos 2 and 4 of 1958 in E P No 149 of 1957 on the file of the Election Tribunal Madurai II, Madurai be and hereby are quashed, and

2 That the 2nd respondent herein do pay to the petitioner herein Rs 31 as and for his costs of this petition

WITNESS the Honourable Mr P V RAJAMMANNAR, CHIEF JUSTICE of the High Court of Judicature at Madras this 1st day of August in the Year One thousand nine hundred and fifty eight

(Sd ) R RAGHAVENDRA RAO,

Appellate side

[No 82/149/57/23 ]

By order,

DIN DAYAL, Under Secy

**S.O. 2374.**—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951 (XLIII of 1951) incurred by the person whose name and address are given in column 1 of the Schedule below, in terms of the Commission's notifications Nos. MD-P/200/57(107) dated the 23rd September, 1957 and MD-P/222/57(142) dated the 23rd September, 1957, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

SCHEDULE

| Name of candidate |
|---|
| Shri Paramasiva Gounder,<br>S/o Nachiappa Gounder,<br>Kanthumuswamy, Chettiar<br>Street, Namakkal. |

[No. MD-P/200/57(107-R)/1209.]
[No. MD-P/222/57(142-R)/1209.]

*New Delhi the 12th November 1958*

**S.O. 2375.**—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/208/57(119) dated the 23rd September, 1957, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

Shri V. Boovaraghaswami Padayachi,
Madhanathur,
Karakurichi Post, (via),
T. Pulur.

[No. MD-P/208/57(119-R)/377.]

*New Delhi, the 15th November 1958*

**S.O. 2376.**—In continuation of its notification No. 82/479/57/410 dated the 30th August, 1958 published as S.O. 1824 in the Gazette of India Extraordinary, Part II—Section 3, Sub-section (ii) [No. 182] dated the 6th September, 1958, under sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, the Election Commission hereby publishes the Judgment and Order of the Supreme Court of India delivered on the 17th October, 1958 in the appeal filed before it by Shri Y. S. Parmar against the Judgment and Order dated the 31st July, 1958 of the Judicial Commissioner, Himachal Pradesh, in Civil Miscellaneous First Appeal No. 2 of 1958 arising from the Order dated the 28th April, 1958 of the Election Tribunal, Nahan in election petition No. 479 of 1957.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTON

CIVIL APPELLANT NO. 410 OF 1958

Dr. Y. S. Parmar—*Appellant*

*Versus*

Shri Hira Singh Paul and another—*Respondents.*

JUDGMENT

*Sarkar J.*

This appeal arises out of an election petition filed by the respondent No. 1, Hira Singh Paul, whom we shall hereinafter refer to as the respondent. The other respondent to this appeal is the Election Commission, but it has not appeared presumably because it is not interested in the result of the appeal which involves

no claim against it. The only question that it involves is whether the appellant was guilty of a corrupt practice, the details of which will be set out later, within the meaning of S.123(7) of the Representation of the People Act, 1951.

In the 1957 General Elections, ten candidates filed their nomination papers to contest the election from the Mahasu double member constituency in Himachal Pradesh. One of the two seats for this constituency was reserved for a Scheduled Caste candidate. Two of the candidates withdrew from the contest and the remaining eight went to the poll. These eight included the appellant, the respondent and one Nek Ram. Nek Ram was declared elected to the reserved seat and the appellant to the general seat. The respondent polled the next largest number of votes to the appellant.

After the results had been declared the respondent filed the election petition on August 3, 1957 challenging the validity of the election of the appellant on the ground that he had committed various corrupt practices. The Election Tribunal framed 18 issues in respect of the various corrupt practices alleged in the petition but answered all the issues excepting issues Nos. 8(i), 8(ii) and 11 against the respondent. Issue No. 8(i) raised the question whether one Amar Singh, said to be a member of the armed forces of the Union of India, worked and canvassed for the appellant. Issue No. 8(ii) was whether Amar Singh was appointed his polling agent by the appellant. Issue No. 11 was in the following terms:

> In case one or more of Issues Nos. (8) to (10) is or are decided in the affirmative, whether the respondent No. 1 obtained, procured or abetted or attempted to obtain, procure by himself by his agents and by his supporters the assistance of the Government servants as specified under the said issues for the furtherance of the prospects of his election?

The Tribunal found against the appellant on Issue Nos. 8(i), 8(ii) and 11 and thereupon declared his election void.

The appellant then went up in appeal to the Judicial Commissioner, Himachal Pradesh, who by his judgment dated July 31, 1958 set aside the finding of the Tribunal on Issue No. 8(i) but maintained its findings on the other two issues and confirmed the declaration that the appellant's election was void. The appellant has come up to this Court by special leave in appeal against that judgment. As will have been seen from what has been earlier stated the only questions that survive are those raised by Issues Nos. 8(ii) and 11.

The facts are not now in disute and may be stated as follows: The constituency was divided into 606 polling stations and for each polling station three polling agents could be appointed. The appellant was thus entitled to appoint 1818 polling agents. On April 28, 1957 he signed a very large number of the forms prescribed by the rules framed under the Act for appointing polling agents, in blank and without setting out therein the name of any polling agent, as he had not then been able to make up his mind in view of the large number of polling stations as to who would be his polling agents at the various polling stations. He made over these forms to Kalyan Singh, who passed on three of them to Kashmira Singh having inserted therein the words "polling station No. 13, Sheopur" Kashmira Singh filled in the name of Amar Singh as the polling agent in one of these forms on May 25, 1957, the day of polling, and made it over to the latter to enable him to act as the appellant's polling agent at polling station No. 13, Sheopur. Amar Singh then duly signed the form as required by the rules and filed it with the presiding officer at polling station No. 13, Sheopur, and on the strength of it, acted as the polling agent of the appellant at that station for about two hours when objection having been taken to him on the ground that he was a member of the armed forces, he withdrew and left the polling station. Amar Singh was on the polling day in fact a member of the armed forces though this was not then known to the appellant. Kalyan Singh and Kashmira Singh acted in all that they did, under the authority of the appellant. These facts may be taken to have been established on the evidence adduced.

The learned Advocate-General of Uttar Pradesh who appeared for the appellant, first sought to contend that Amar Singh had not really been appointed the appellant's polling agent. He said that under S. 46 of the Act a polling agent can be appointed only by the candidate himself or by his election agent and Amar Singh could not on the facts found for reasons to be stated presently, be said to have been appointed a polling agent either by the appellant or his election agent. Therefore, according to him, Amar Singh had not been appointed the appellant's polling agent at all and hence the charge of corrupt practice against him for having so appointed Amar Singh must fail.

First, it seems to us that this argument is not open to the learned Advocate-General. He himself appeared for the appellant before the learned Judicial Commissioner and there conceded that the factum or the validity of the appointment of Amar Singh as the appellant's polling agent could not be questioned by him. We do not think that we should permit the appellant to withdraw a concession expressly made by his counsel in the Court below in a matter of this kind. This is all the more so as the present argument does not seem to have been raised when the matter was before the Tribunal, either. Secondly, it seems to us that the contention is without substance. We will assume that the learned Advocate-General is right in his contention that under the Act a polling agent can be appointed only by the candidate himself or by his election agent and not by the candidate acting through any other agent. The learned Advocate-General's contention is that on the facts found, the only possible conclusion is that Amar Singh had not been appointed polling agent by the appellant himself but by one or other of his agents, namely, Kalyan Singh or Kashmira Singh and as none of them was his election agent, the appointment was invalid. It is not in dispute that neither Kalyan Singh nor Kashmira Singh was his election agent. In fact it appears that the appellant had no election agent at all. In our view, however, this does not matter as the present is not the case of an appointment by any agent but by the appellant himself. We have come to this view because here the appointment was made by the document signed personally by the appellant. The fact that the name of the polling agent was written in the document by another person after the appellant had signed it, does not make the appointment of the polling agent under that document an appointment by some other person acting as the agent of the appellant. On the language of the document—and the appointment was not purported to have been made in any other way than by the document—it was an appointment made by the appellant himself. The other person only wrote the name in the document which he had authority to do. He did not purport to make any appointment at all. It is impossible to read the document as the making of the appointment by an agent of the appellant acting for him. The true view of the matter plainly is that the appellant himself appointed by the document as his polling agent, a person whose name had been written therein by another with his authority. We, therefore, hold that Amar Singh had been appointed his polling agent by the appellant himself. It was thus even on the learned Advocate-General's construction of s. 46, a proper appointment.

We then come to this that the appellant appointed Amar Singh, a member of the armed forces, his polling agent and the latter acted as such. The question is: Did this amount to a corrupt practice by the appellant? The respondent's contention which has been accepted by the Courts below, is that it is a corrupt practice within s. 123(7) of the Act. That provision so far as is relevant and the explanation to it, are in these terms:

> *Section* 123.—This following shall be deemed to be corrupt practices for the purposes of this Act:—
>
> * * * *
>
> * * * *
>
> (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate, or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—
>
> * * * *
>
> * * * *
>
> (c) members of the armed forces of the Union;
>
> *Explanation.*—(1) * * *
>
> * * * *
>
> (2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate.

The learned Advocate-General contends that the procuring or obtaining by a candidate of any assistance for the furtherance of the prospects of his election from a person in the service of the Government as a member of the armed forces,

would not amount to a corrupt practice unless that candidate knew that the person was in such Government service. He says that the words 'procuring or obtaining' import such knowledge and that this view of the matter receives great strength from the word 'for' in the phrase "for the furtherance of the prospects of that candidate's election". According to him, without such knowledge the candidate cannot be said to have procured or obtained any assistance, for no one can obtain or procure a thing unless he knows that he is doing so. He then points out that there is evidence that neither the appellant nor Kalyan Singh nor even Kashmira Singh knew that Amar Singh was a member of the armed forces. He, therefore, says that the appellant cannot in the absence of such knowledge be said to have procured or obtained the assistance of a member of the armed forces for furthering the prospects of his election.

It is true that neither the appellant nor Kalyan Singh, nor even Kashmira Singh knew at the date of the appointment of Amar Singh that he was a member of the armed forces but the point now raised by the learned Advocate-General is, in our view, none the less unsustainable. It overlooks the provisions of the second explanation to the section which we have already set out. Under that explanation if a person acts as the polling agent of a candidate it must be held without more, that he assisted in furtherance of the prospects of that candidate's election in the present case therefore it has to be held that Amar Singh who acted as the appellant's polling agent, thereby assisted in the furtherance of the prospects of his election. Now under the provisions of the Act, no one can act as the polling agent of a candidate unless he has been appointed as such and we have already held that the appellant himself had appointed Amar Singh as his polling agent. It follows in view of the explanation that the appellant procured and obtained the assistance of Amar Singh for the furtherance of the prospects of his election. All the requirements of the section are thus satisfied and the appellant must therefore be held to have committed the corrupt practice thereby constituted. All that the section requires is that assistance shall be procured for furthering the election. Where the explanation applies as it does in the present case, if a candidate has appointed a person to act as his polling agent and he accordingly does so act, a statutory presumption arises that the candidate thereby procured that person's assistance in furtherance of the prospects of his election, and this irrespective of whether he intended to procure such assistance or not. Indeed, as Mr. Achhruram appearing for the respondent pointed out, the explanation clearly shows that the candidate's intention is irrelevant, for, such presumption arises even when a candidate has procured another person to act as his counting agent and it is very difficult to imagine that the appointment of a counting agent can further the prospects of any election, for the counting agent acts after the polling is over and only when the votes already polled are counted. Therefore it seems to us that in the case of the appointment of a polling agent which comes within the explanation as the present case does, the intention of the candidate in procuring the assistance is irrelevant. If that is so, it is clear that the knowledge of the candidate whether the person, whose service as his polling agent he has procured, is a member of the armed forces or any of the other specified class of Government servants or not, is equally irrelevant. We think therefore that the learned Advocate-General's contention must fail.

What we have said just now also disposes of the other argument of the learned Advocate-General, namely, that a corrupt practice is in the nature of a criminal act and cannot therefore be established unless *mens rea*, or criminal intention, is established and that the appellant cannot be said to have committed a corrupt practice for he had no *mens rea* in a appointing Amar Singh his polling agent since he did not know that Amar Singh wa sa member of the armed forces. On this point we were referred to certain passages from English text-books on election law of which it will be enough to refer to one, for all state the law in substantially the same terms. In Schefield's Parliamentary Elections, 2nd Edn. which is one of the text-books to which we were referred, it is stated at p. 402,

> There is an elementary distinction between a corrupt and an illegal practice. To establish the former it is essential to show that a corrupt intention is present. A corrupt practice is a thing the mind goes along with whereas an illegal practice is a thing the legislature is determined to prevent, whether it is done honestly or dishonestly.

The view thus formulated is founded on the English law of election and is clearly of no assistance to us. It is based on particular English statutes and the language employed therein. We have already shown that our statute in the case at least of a corrupt practice of the kind in hand does not concern itself with any question of intention. Mr. Achhruram with his usual industry made available to us the English statutes on which the statement of law set out in the text

books referred to by counsel for the appellant had been based and pointed out that under these statutes the acts therein made corrupt practices had to be done corruptly and that corrupt practices were always made offences punishable as crimes. It may be of use here to point out that the relevant provisions in our statute were amended in 1956 and that has done away with the distinction between illegal and corrupt practices. In fact, we have now only corrupt practices and no illegal practices. The present case, it may be pointed out, is governed by the amended statute. No question of *mens rea* or intention or knowledge of the candidate arises in this case.

We, therefore, come to the conclusion that the appellant was guilty of a corrupt practice by appointing Amar Singh, a member of the armed forces, his polling agent whereby the latter was enable to and did act as such. The appellant's election was consequently in our opinion rightly declared void.

The appeal is therefore dismissed with costs.

(Sd.) T. L. VENKATARAMA AIYAR, J.
(Sd.) P. B. GAJENDRAGADKAR, J.
(Sd.) A. K. SARKAR, J.

*Dated New Delhi,*
*The 17th October 1958.*

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 410 OF 1958

(Appeal by Special Leave granted by this Court against the judgment and Order dated the 31st July, 1958 of the Court of the Judicial Commissioner, Himachal Pradesh at Simla in Civil Miscellaneous First Appeal No. 2 of 1958.)

Dr. Y. S. Parmar.—*Appellant.*

*Versus*

Shri Hira Singh Pal,

The Election Commission, India.—*Respondents.*

*17th October*, 1958.

CORAM:

The Hon'ble Mr. Justice T. L. Venkatarama Aiyar

The Hon'ble Mr. Justice P. B. Gajendragadkar

The Hon'ble Mr. Justice A. K. Sarkar.

*For the Appellant*:—Mr. K. L. Misra, Advocate General of U.P. (Mr. S. S. Shukla, Advocate with him).

*For Respondent No.* 1:—Mr. Achhru Ram, Senior Advocate. (Mr. Ganpat Rai, Advocate with him).

The appeal above-mentioned being called on for hearing before this Court on the 7th and 8th days of October 1958 UPON hearing Counsel for the parties THIS COURT took time to consider its judgment AND the said Appeal being called on for judgment on the 17th day of October 1958 THIS COURT DOTH ORDER:—

1. THAT the Appeal above-mentioned against the judgment and Order dated the 31st July 1958 of the Court of the Judicial Commissioner at Simla in Civil Miscellaneous First Appeal No. 2 of 1958 be and the same is hereby dismissed;

2. THAT the Appellant herein do pay to Respondent No. 1 herein the costs of this Appeal incurred by him in this Court AND the costs of this Appeal if any incurred in the Court of the Judicial Commissioner, Himachal Pradesh at Simla;

3. THAT the said costs incurred in this Court be taxed by the Taxing Officer of this Court;

4. THAT the order of this Court dated the 25th August 1958 in Civil Miscellaneous Petition No. 1013 of 1958 restraining Respondent No. 2 herein Viz. The Election Commission India from holding the bye-election to the general seat of the Mahasu Parliamentary Constituency of Himachal Pradesh be and the same is hereby vacated;

AND THIS COURT DOTH FURTHER ORDER that this Order be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble SHRI SUDHI RANJAN DAS Chief Justice of India at the Supreme Court New Delhi the 17th day of October 1958.

(Sd.) GURU DATTA,
Deputy Registrar.
25th October, 1958.

[No. 82/479/57/344.]

By order,
DIN DAYAL, Under Secy.

*New Delhi, the 13th November 1958*

**S.O. 2377.**—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission, in consultation with the Government of Mysore, hereby nominates Shri R. Sampathkumaran, B.Sc., as the Chief Electoral Officer for that State with effect from the date he takes over charge.

[No. 154/8/58.]

By order,
S. C. ROY, Secy.

## MINISTRY OF LAW

### (Department of Legal Affairs)

*New Delhi, the 12th November 1958*

**S.O. 2378.**—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that any of the officers specified below may sign and execute on his behalf any application, agreement, letter of guarantee or other document required or permitted under the procedure to be followed by the Export-Import Bank of Japan in granting loans to India against the line of credit in pursuance of the Yen Credit Agreement dated the 4th February, 1958 between India and Japan, namely:—

(i) Secretary to the Government of India in the Ministry of Finance, Department of Economic Affairs;

(ii) Additional Secretary to the Government of India in the Ministry of Finance, Department of Economic Affairs;

(iii) Ambassador of India in Japan or in his absence the *Charge'd·Affaires* of India in Japan; or

First Secretary to the Embassy of India in Japan.

[No. F.44(14)/58-J.]

R. S. GAE, Joint Secy.

## MINISTRY OF HOME AFFAIRS

*New Delhi, the 12th November 1958*

**S.O. 2379.**—Shri U. S. Madhukar, a temporary Assistant Supervisor, Hindi Teaching Scheme, Ministry of Home Affairs, stationed at Calcutta was granted earned leave for 11 days with effect from the 11th August 1958 to the 21st August, 1958.

[No. 8/18/58-H]

B. SHUKLA, Dy. Secy.

*New Delhi, the 13th November 1958*

**S.O. 2380.**—The Central Government is pleased to notify that Nawabzada Muzaffer Mohamed Khan, son of His Highness the Nawab of Palanpur, has

been nominated by the said Ruler, for the purposes of entry 2(b) of the table annexed to Schedule I to the Indian Arms Rules, 1951.

[No. F. 16/15/58-Police IV]

V. P. MITHAL, Under Secy.

## LOK SABHA SECRETARIAT

### ORDER

*New Delhi, the 31st October 1958*

**S.O. 2381.**—In exercise of the powers conferred by Explanation below rule 9 of the Lok Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1955, the Speaker, after consultation with the Ministry of Finance, is pleased to direct that the posts in the Lok Sabha Secretariat specified in column 2 of the Annexure to this Order shall correspond to posts in the Central Secretariat specified in the corresponding entries in column 3 of that Annexure.

ANNEXURE

| S.N. | Post in the Lok Sabha Secretariat | Post in the Central Secretariat |
|---|---|---|
| 1 | 2 | 3 |
| 1 | Secretary | Secretary to the Government of India. |
| 2. | Joint Secretary | Joint Secretary to the Government of India. |
| 3. | Deputy Secretary | Deputy Secretary to the Government of India. |
| 4. | Under Secretary | Under Secretary to the Government of India. |
| 5. | Chief Research Officer,<br>Superintendent Committee Officer. | Officers of Grade II of the Central Secretariat Service. |
| 6. | Private Secretary to the Speaker. | Private Secretary to Minister. |
| 7. | Chief Reporter,<br>Editor of Parliamentary Publications,<br>Research Officer,<br>Assistant Information Officer,<br>Assistant Research Officer,<br>Librarians,<br>Assistant Manager of Printing,<br>Assistant Watch & Ward Officer,<br>Assistant Superintendent. | Officers of Grade III of the Central Secretariat Service. |
| 8. | Private Secretary to Deputy Speaker.<br>First Personal Assistant to the Speaker,<br>Private Secretary to Secretary. | Officers of Grade I of the Central Secretariat Stenographers Service. |
| 9. | Parliamentary Reporters. | Reporters in the Government of India. |
| 10. | Information Assistant (Senior) | Information Assistant in the Government India. |
| 11. | Committee Assistant,<br>Artist Assistant,<br>Assistant Editor,<br>Senior Printing Assistant<br>Printing Assistant,<br>Information Assistant,<br>Assistant,<br>Assistant Librarian. | Officers of the Grade IV of the Central Secretariat Service. |
| | Committee Stenographer,<br>Second Personal Assistant to the Speaker,<br>Personal Assistant to the Deputy Speaker,<br>Personal Assistant to the Chairman,<br>Public Accounts Committee.<br>Personal Assistant to the Chairman,<br>Estimates Committee.,<br>Personal Assistant to the Secretary,<br>Personal Assistant to Joint Secretary. | Officers of Grade II of the Central Secretariat Stenographers Service. |

| 1 | 2 | 3 |
|---|---|---|
| 13. | Stenographers | Officers of Grade III of Central Secretariat Stenographers Service. |
| 14. | Translators | Translators in the Ministry of Law. |
| 15. | Proof Reader,<br>Senior Watch & Ward Asstt,<br>Upper Division Clerk,<br>Cashier-cum-Accountant,<br>Junior Accountant,<br>Junior Cashier. | Officers of Grade I of the Central Secretariat Clerical Service. |
| 16. | Junior Watch & Ward Assistant,<br>Lower Division Clerks (Clerks & Typists),<br>Bill Clerks,<br>Sales Clerk,<br>Accounts Clerk,<br>Steno-typists (Hindi & English)<br>Hindi Typists,<br>Copy Holders,<br>Adrema Operators. | Officers of Grade II of the Central Secretariat Clerical Service. |
| 17. | Chauffeur | Chauffeur in the Government of India. |
| 18. | Despatch Rider | Despatch Rider in the Government of India. |
| 19. | Gestetner Operators | Gestetner Operators in the Government of India. |
| 20. | Record Sorter | Record Sorter in the Government of India. |
| 21. | Daftry | Daftry in the Government of India. |
| 22. | Jamadar | Jamadar in the Government of India. |
| 23. | Messenger | Peon in the Government of India. |
| 24. | Sweeper | Sweeper in the Government of India. |

[No. F. 46-SD/56.]

M. N. KAUL, Secy.

## MINISTRY OF FINANCE
### (Department of Economic Affairs)

*New Delhi, the 14th November 1958*

**S.O. 2382.**—Statement of the Affairs of the Reserve Bank of India, as on the 7th November 1958

BANKING DEPARTMENT

| LIABILITIES | Rs. | ASSETS | Rs. |
|---|---|---|---|
| Capital paid up | 5,00,00,000 | Notes | 11,62,58,000 |
| Reserve Fund | 80,00,00,000 | Rupee Coin | 3,10,000 |
| National Agricultural Credit (Long-term Operations) Fund | 25,00,00,000 | Subsidiary Coin | 4,63,000 |
| | | Bills Purchased and Discounted :— | |
| National Agricultural Credit (Stabilisation) Fund | 3,00,00,000 | (*a*) Internal | .. |
| Deposits :— | | (*b*) External | .. |
| (*a*) Government— | | (*c*) Government Treasury Bills | 2,58,47,000 |
| (1) Central Government | 62,21,36,000 | Balances held abroad* | 14,21,68,000 |
| (2) Other Governments | 19,39,25,000 | **Loans and Advances to Governments | 20,36,10,000 |
| (*b*) Banks | 82,83,75,000 | Other Loans and Advances† | 56,73,64,000 |
| (*c*) Others | 114,29,39,000 | Investments | 311,19,72,000 |
| Bills Payable | 15,81,77,000 | Other Assets | 10,08,91,000 |
| Other Liabilities | 19,33,31,000 | | |
| TOTAL | 426,83,83,000 | TOTAL | 426,88,83,000 |

Dated the 13th day of November, 1958.

*Includes Cash & Short term Securities.

**Includes Temporary Overdrafts to State Governments.

†The item 'Other Loans and Advances' includes Rs. 1,17,00,000/- advanced to scheduled banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 7th day of November 1958.

ISSUE DEPARTMENT

| LIABILITIES | Rs. | Rs. | ASSETS | Rs. | Rs. |
|---|---|---|---|---|---|
| | | | A. Gold Coin and Bullion— | | |
| Notes held in the Banking Department | 11,62,58,000 | | (a) Held in India | 117,76,03,000 | |
| Notes in circulation | 1572,55,66,000 | | (b) Held outside India | .. | |
| Total Notes Issued | | 1584,18,24,000 | Foreign Securities | 164,67,56,000 | |
| | | | TOTAL OF A | | 282,43,59,000 |
| | | | B. Rupee Coin | | 137,02,00,000 |
| | | | Government of India Rupee Securities | | 1164,72,65,000 |
| | | | Internal Bills of Exchange and other commercial paper | | .. |
| TOTAL—LIABILITIES | | 1584,18,24,000 | TOTAL—ASSETS | | 1584,18,24,000 |

Dated the 13th day of November, 1958.

H. V. R. IENGAR, Governor

[No. F. 3(2)-F. 1/58.]

A. BAKSI, Jt. Secy.

*ERRATUM*

In the statement of Affairs of the Reserve Bank of India as on 17th October, 1958, published in the Gazette of India, Part II—Section 3(ii) dated 1st November, 1958 as S.O. 2235, the following correction is to be made:—

Page 2009, in the Assets column, under Banking Department—figures against Notes—

*for* 10,31,03,000 read 10,81,03,000

**(Department of Economic Affairs)**

*New Delhi, the 14th November 1958*

**S.O. 2383.**—In pursuance of sub-section (2) of section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendation made by the Chairman of the Board of Directors of the Industrial Finance Corporation of India under sub-section (4) of section 10A of the said Act, hereby fixes 4¼ per cent per annum as the rate of interest payable on the bonds to be issued by the said Corporation on the 24th November, 1958, and maturing on the 24th November, 1968.

[No. F.2(87)-Corp/58.]

A. K. NATARAJAN, Under Secy.

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**(Department of Economic Affairs)**

**(Office of the Controller of Capital Issues)**

ORDER

*New Delhi, the 14th November 1958*

**S.O. 2384.**—In pursuance of section 7 of the Capital Issues (Control) Act, 1947 (29 of 1947) and in supersession of Order of the Government of India in the Ministry of Finance No. F.15(2)-CCI/54/1272, dated the 19th May 1954, published in the Gazette of India, dated the 29th May 1954, (S.R.O. 1698), the Central Government hereby authorises every Registrar of Companies to exercise within the limits of his jurisdiction the powers specified in the said section for any of the purposes of the said Act.

[No. S-7(19)-CCI(II)/58-5071.]

A. BAKSI, Controller of Capital Issues.

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**(Department of Revenue)**

*New Delhi, the 8th November 1958*

**S.O. 2385.**—Consequent on his transfer to Bombay as Appellate Assistant Commissioner of Income-tax, the powers conferred on Shri N. Subba Rao by this Ministry Notification No. 27, dated the 12th June, 1957 are hereby withdrawn.

[No. 34]

*New Delhi, the 12th November, 1958*

**S.O. 2386.**—In pursuance of clause (b) of sub-rule (ii) or rule 2 of the Appellate Tribunal Rules, 1946, the Central Government has been pleased to appoint Shri K. B. Jindal, Income-tax Officer, as Authorised Representative, from the 10th October 1958, to appear, plead and act for any Income-tax authority who is a party to any proceedings before the Income-tax Appellate Tribunal.

[No. 35]

P. N. DAS GUPTA, Dy. Secy.

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**(Department of Revenue)**

*CORRIGENDUM*

*New Delhi, the 18th November 1958*

**S.O. 2387.**—In this Ministry's notification No. S.O. 1462 dated the 21st July 1958 published in Part II, Section 3, sub-section (ii) of the Gazette of India of 26th July, 1958; in column (1) of the Schedule, *for* the words "All ports" *read* "All posts".

[No. F.19/29/58-Ad.V.]

J. M. LALVANI, Dy. Secy.

## OFFICE OF THE DY. COLLECTOR OF CENTRAL EXCISE AND LAND CUSTOMS, BOMBAY

### NOTICES

*Bombay, the 10th November 1958*

**S.O. 2388.**—Whereas it appears that the marginally noted goods which were

| | |
|---|---|
| 17 bags containing Goa-betelnuts | 16 B. Mds.-1 Sr. |

seized by the Honavar Police from a house at Hiramath on 24-2-1958 were imported by sea from Goa (Portuguese Territory in India) in contravention of the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 167(8) of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 167(8) of the Sea Customs Act 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accodinrgly.

[No. VIII(a)10(17)Cus/58.]

**S.O. 2389.**—Whereas it appears that the marginally noted goods which were

| | | |
|---|---|---|
| 40 Gunny bags containing Goa Chali variety betelnuts. | B.Mds. Srs. 41--5 | seized by the local Central Excise Officers near Abot |

village on 9-4-1958 were imported by sea from Goa (Portuguese Territory in India) in contravention of the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 167(8) of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII (a)(18)Cus/58.]

**S.O. 2390.**—Whereas it appears that the marginally noted goods which were

| | |
|---|---|
| List attached. | |

seized by the S.R.P. Party in the jungles of Kaleracha Pancha near Aros villages on Goa frontier on 10-7-1958 were imported by land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and empty gunny bags other articles under S. 168 S.C.A. and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

*List showing the items of seizure*

| Sl. No. | Description of goods | Quantity. |
|---|---|---|
| 1 | A gunny bag containing cloves | 1 B.Md. 2 Srs. |
| 2 | A gunny bag containing cloves | 1 B. Md. 1 sr. |
| 3 | A gunny bag containing cloves | 32 srs. |
| 4 | One hundred seventeen packets of 7O'Clock blades each packet containing 100 blades | 11700 blades |
| 5 | Packets of spring press buttons made in Germany having the mark of '555' each packet contains two gross buttons | 12 packets |
| 6 | One packet having U.M.V. needle files | 4 files |
| 7 | Cycle horn made in Japan | 1 horn |
| 8 | Rose colour georgette like Voil having flower design | 5 yds. |
| 9 | Red colour georgette like Voil | 5 yds. |
| 10 | Sattin cloth | 2 yds. |
| 11 | Old One shirt and one pant | 2 |
| 12 | four gunny bags and four waterproof cloth bags | 8 |

[No VIII(b)10(174)Cus/58.]

**S.O. 2391.**—Whereas it appears that the marginally noted goods which were seized by the Central Excise staff at a place called 'Ban' in Aros village on 7-5-1958 were imported by land sea from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Dy. Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) and 168 of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

Goa Betelnuts 12 B. Maunds.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(176)Cus/58.]

**S.O. 2392.**—Whereas it appears that the marginally noted goods which were seized by the Central Excise staff in the jurisdiction of Ch No. 35 in Banda Beat (Goa border were being exported by land to Goa (Portuguese Territory in India) in contravention of Section 5(1) the Land Customs Act, 1924 and the Government of India Ministry of Commerce and Industries Export Control Order No. 1/54 dated 10-5-1954 read with their P No 4744 dated 23-3-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and empty bags under Section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

1.2 bags containing 'Prabhat Saree 50'
2.2 bags containing 'Vijay Textile Sarees' 79
3.7 bags of glass bangles 182 Bundle

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(177)Cus/58.]

S.O 2393.—Whereas it appears that the marginally noted goods which were

| | | |
|---|---|---|
| 1. Constantino Foreign liquor | 66 bottles | seized by the Central Excise staff in the jurisdiction of Ch. No. 75 and 76 on Goa |
| 2. Scotch whisky. | 2 bottles | |
| 3. Gunny bags. | 5 | |

border on 3rd June 1958 were imported by Land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55, dated 7th December 1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Deputy Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878 and the gunny bags under section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read iwth Section 167(8) of the Sea Customs Act 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(179)Cus/58.]

*Bombay, the 10th November 1958*

S.O. 2394.—Whereas it appears that the marginally noted goods which were

| | |
|---|---|
| 13 Gunny bags containing Goa-betelnuts ... ..12 B.mds.-29 srs. | seized by the Police sub-inspector Banda at a |

place in Kalebhat village on the Goa border were imported by land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878 Now therefore any person claiming the goods is hereby called upon to show cause to the Deputy Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878 and gunny bags under section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878

If such an owner fails to trun up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly

[No. VIII(b)10(189)Cus/58 ]

S.O. 2395.—Whereas it appears that the marginally noted goods which were

| | |
|---|---|
| List enclosed | seized by the Central |

Excise Officer at Londa Railway Station on 25-5-1958 were imported by land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Deputy Collector of Central Excise and Land Customs Bombay why the above mentioned goods of foreign origin should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and other articles under Section 168 of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken with 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

*List of articles*

| | | |
|---|---|---|
| 1. | Bora Extra C-lighters | 537 |
| 2. | "OMEGA Super lighter | 6 |
| 3. | "Yardley" Old English Soap | 1 |
| 4. | Evening in Paris perfume | one bottle |
| 5. | New-olue bush shirt | one |
| 6. | Old plastic rain coat | one |
| 7. | Used full pants | Two |
| 8. | White coloh bush coat (spoile) | one |
| 9. | Black mon Tobacco | 120 packets |
| 10. | Canvas hand bags with chain | Two |
| 11. | Old Chaddaras | Two |
| 12. | Old matress | one |

[No. VIII(b)10(181)Cus/58.]

**S.O. 2396.**—Whereas it appears that the marginally noted goods which were seized by the Central Excise officers at a place called 'Dharavat in the jurisdiction of Ch. No. 42 in Sasoli Range on 18-5-1958 were imported by land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Dy. Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and empty bags under Section 168 of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

| | |
|---|---|
| Betelnuts 15 bags and one moth | B. Mds. rs. 11 -- |

If such an owner fails to turn up to claim the above montioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(210)Cus/58.]

**S.O. 2397.**—Whereas it appears that the marginally noted goods which were seized by the Central Excise staff at a place called 'Govikarwada' Koyubag Karwar on 21st May 1958 were imported by land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55, dated 7th December 1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now, therefore, any person claiming the goods is hereby called upon to show cause to the Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and gunny bags and canvas bag under S. 168 of S.C.A 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

(i) 583 carton (Display) 58300 blades of 7'o Clock Razor blades

(ii) Prydm Press Studs made 476 gross in Germany

(iii) Gunny bags 3 and 1 canvas bag 1

If such an owner fails to turn up to claim the above-mentioned goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(211)Cus/58.]

S.O. 2398.—Whereas it appears that the marginally noted goods which were seized by the Central Excise Officers Ankola at a place called Agsar on 2nd June 1958 were imported by Land from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7-12-1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now, therefore, any person claiming the goods is hereby called upon to show cause to the Deputy Collector of Central Excise and Land Customs Bombay why the above-mentioned goods should not be confiscated under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act 1878.

| | |
|---|---|
| 13 Packages containing Goa betelnuts..... | 13 B. Mds. |

If such an owner fails to turn up to claim the above-mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(215)Cus/58.]

*Bombay, the 14th November 1958*

SUBJECT:—*Seizure of chiramin silk made in China 2 Takas value Rs. 1200-00 and Georgette 1 Taka value Rs. 300-00.*

S.O. 2399.—Whereas it appears that the above mentioned goods have been imported/by land from Daman without a permit as required under Section 5(1) of the Land Customs Act, 1924 and whereas the said goods were not covered by a licence as required by the Government of India, Ministry of Commerce and Industries Import Control/Order No. 17/55 dated 7th December, 1955 as amended, issued under Section 3 of the Imports and Exports (Control) Act, 1947 and whereas the Order is deemed to have been issued under Section 19 of the Sea Customs Act, VIII of 1878 and whereas it appears that the actions of Shri Balu Lallu of Dabhel (Daman) as a person concerned in these offences attract the operation of Section 7(1)(c) of the Land Customs Act, 1924 Read with Section 167(8) of the Sea Customs Act, 1878. Now therefore Shri Balu Lallu Dubla of Dabhel is hereby required to show cause to the undersigned why a penalty should not be imposed on him under this Section (1) and why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of Sea Customs Act, 1878.

2. — —— ——————

Shri Balu Lallu Dubla of Dabhel is further directed to produce at the time of showing cause all the evidence upon which he intends to reply in support of his defence. He further directed to inform the undersigned whether he desires to be heard in person by the undersigned in the case.

If no cause is shown against the action proposed to be taken within ten days of the receipt of this notice, the case will be decided *ex-parte*.

[No. VIII(b)10(59)Cus/58.]

M. C. BAHRI,

Dy. Collector of Central Excise and Land Customs.

## DIVISIONAL OFFICER, CENTRAL EXCISE & CUSTOMS, BOMBAY

### NOTICES

*Bombay, the 14th November 1958*

**S. O. 2400.**—Whereas it appears that the marginally noted unclaimed goods which were seized by the Central Excise staff on 28-3-58 at about 2-30 hrs near Ch. No.14 were exported by LAND TO Daman Portuguese territory from India. In contravetion of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industry I.T.C. order No. 1/54 dated 10-5-54 issued under sec. 3 of 4 A of the Import and Export Control Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878.

| Sl. No. | Description of the goods | Quantity | Value. |
|---|---|---|---|
| | | | Rs. n.p. |
| 1 | Indian Currency notes | | 345.00 |
| 2 | Wrist watch with strap (rolled gold) "Kasper" 21 Jewels "Nivafles" Shock proof, waterproof, Nonmagnetic | 1. | 100·00 |
| 3 | Boistos "Eucaliptus oil bottles" "Australia". | 3 | 3·00 |
| 4 | "Khona Eucaliptus oil bottle | 1 | 0·50 |
| 5 | "Viteloin" Vitamin "E" Capsules | 1 bottle | 5·00 |
| 6 | Mastana darbar agarbati bundle | 1 | 0·50 |
| 7 | Jawhir Bindu Medicine bottle | 1 | 1·00 |
| 8 | Surma No. 13 bottle | 1/4 tola | 1·00 |
| 9 | Sarees voil printed | 2 | 15·00 |
| 10 | Art silk, bush coats, small size printed crinckle for children | 6 | 10·00 |
| 11 | Baby suit of cream colour Shark skin. | 1 | 3·00 |
| 12 | Nickers of staple cloth fibre (small size for children) | 2 | 1·00 |
| 13 | Chappals | 3 Pairs | 5·00 |
| 14 | Sandles (2 big and 1 small) | 3 „ | 10·00 |
| 15 | Tea loose | 3 lbs | 5·00 |
| 16 | Coffee loose | 1/2 lb. | 1·00 |
| 17 | Almonds, charoli, pistas, Cardemum, Mehndi, aurvedic guti. | 6 packets | 1·00 |
| 18 | China grass | 1 bundle | 1·00 |
| 19 | Wet Jinger, Chillies | 1/4 lb | 0·12 |
| | | TOTAL | 508·12 |

Now whereas any person claiming the goods is hereby called upon to show cause to the Assistant Collector of C.Ex., Bombay III as to why above-mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with sec. 167(8) of the Sea Customs Act, 1878 and why a penalty should not be imposed on him, under Section 7(1) (*b*) of the Land Customs Act, 1924 read with section 167(8) of the Sea Customs Act, 1878.

If such an owner fails to turn up to claim the above-mentioned goods on to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette/Bombay State Govt. Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII/15-8/58]

**S. O. 2401.**—Whereas it appears that the marginally noted unclaimed goods which were seized by S.R.P. staff of on 25-9-58 at about 4-30 near Ch. No. 17 were imported by land from Foreign possession in India in contravention of Sec. 5(1) of the Land Customs Act, 1924 and Government of India, Ministry of Commerce and Industry I.T.C. No. 17/55 of 17th Dec. 58 issued under the Import and Export Control Act, 1947 and deemed to have been issued under section 19 of the Sea Customs Act. 1878.

| Sl. No. | Description of goods | Quantity | Value |
|---|---|---|---|
| | | | Rs. n.p. |
| 1 | Lighters (Mechanical) Imcotriplex patent made in Austria. | 144 | 432·00 |
| 2 | Military unebling hamersack | 1 | 3·00 |
| 3 | Cloues | 1 sr. kucha | 8·00 |
| 4 | Coloured blue scraps (printed) | 2 | 6·00 |
| 5 | „ ref ( „) | 1 | |
| 6 | Old parts of sewing machine | 3 | 0·00 |
| 7 | Radio Condensers large | 1 | 4·00 |
| 8 | „ „ small | 1 | 2·00 |
| 9 | Empty cotton gabs | 2 | 0·25 |
| 10 | Empty cemcb bags | 2 | 0·50 |
| 11 | Cigarette tobacco packet loose | 1 | 0·37 |
| 12 | Cigarette paper loose packet | 1 | 0·06 |
| | | TOTAL | 460·18 |

Now whereas any person claiming the goods is hereby called upon to show cause to the Asst. Collector of Central Excise, Bombay III as to why the above-mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act 1924 read with section 5(3)

of the Land Customs Act 1924 read with section 167(8) of the Sea Customs Act 1878 and why a penalty should not be imposed on him under Section 7(1) (c) of the Land Customs Act, 1924 read with section 167(8) of the Sea Customs Act, 1878. If such an owner fails to turn up to claim the above-mentioned goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette/Bombay State Government Gazette the goods in question will be treated as *unclaimed* and the case will be decided accordingly.

[No. VIII/15-76/58].

R. N. SHUKLA, IRS,
Asstt. Collector.

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## CENTRAL BOARD OF REVENUE

INCOME-TAX

*New Delhi, the 18th November, 1958*

**S.O. 2402.**—In exercise of the powers conferred by sub-section (4) of Section 5 of the Indian Income-tax Act, 1922 (11 of 1922) the Central Board of Revenue hereby makes the following further amendments in its notification S.O. 660 No. 35-Income-tax dated the 22nd April 1958, namely:—

In the Schedule appended to the said notification under sub-head "XIV-Uttar Pradesh", against

(a) Dehra Dun, the entry "3. Najibabad" shall be deleted;

(b) Moradabad, after the existing entry "2. Rampur" the following entry shall be added namely:—

"3. Najibabad".

(c) Agra, the entry "2. Mathura" shall be deleted and the subsequent entry shall be renumbered as "2. Aligarh".

(d) Varanasi, (i) the entry "2. Gorakhpur" shall be deleted and the subsequent entry shall be renumbered as "2. E.D. Cum I.T. Circle, Varanasi";

(ii) after "2. E.D. Cum I.T. Circle, Varanasi the following entries shall be added, namely:—

"3. Azamgarh.

4. Mirazapur".

(e) Allahabad, the entries—

"3. Faizabad.

4. Mirzapur.

6. Azamgarh.

7. Project Circle, Lucknow".

shall be deleted; and the entry "5. Gonda" shall be renumbered as "3. Gonda";

After entry "3. Gonda" the following entry shall be added, namely:—

"4. Gorakhpur".

(f) Lucknow, after entry "5. Sitapur" the following entry shall be added, namely:—

"6. Faizabad".

(g) Kanpur II, after "3. E.D. Cum I.T. Circle, Kanpur" the following entry shall be added, namely:—

"4. Mathura".

(h) Kanpur III, after "3. Special Survey Circle, Kanpur" the following entry shall be added, namely:—

"4. Project Circle, Lucknow".

These amendments shall come into force from the 1st December, 1958.

*Explanatory Note*

NOTE:—The amendments have been necessitated on account of the reorganisation of the Appellate Assistant Commissioner's Ranges in Uttar Pradesh.

(This note does not form a part of the notification but is intended to be clarificatory).

[No. 100(F.No.50/54/58-IT)]

A. K. MUKHERJEE, Under Secy.

## MINISTRY OF COMMERCE AND INDUSTRY

*New Delhi, the 5th November 1958*

**S.O. 2403.**—In exercise of the powers conferred by section 17 of the Standards of Weights and Measures Act, 1956 (89 of 1956), the Central Government hereby makes the following rules namely:—

1. These rules may be called the Standards of Weights and Measures Rules, 1958.

2. In these rules,—

(a) "Act" means the Standards of Weights and Measures Act, 1956 (89 of 1956);

(b) "Director" means the Director, National Physical Laboratory, Delhi, and includes any person authorised by him in this behalf;

(c) "international proto-types" means the proto-types declared to be the international proto-types of the metre and kilogram by the Conference Generale des poids et Mesures held at Paris in 1889;

(d) "Mint" means the Mint of the Central Government either in Bombay or in Calcutta.

(e) "national proto-types" means the proto-types of the metre and the kilogram kept in pursuance of sub-section (2) of section 3 and sub-section (2) of section 4 of the Act;

(f) "reference standards" means the sets of standard weights specified in the First Schedule and supplied by the Central Government to State Governments in pursuance of sub-section (2) of section 15 of the Act;

(g) "Schedule" means a Schedule appended to these rules;

(h) "standard weight or measure" means any unit of mass or measure referred to in sub-section (1) of section 13 of the Act and includes any integral multiple or decimal fraction of such unit notified in this behalf by the Central Government.

3. (1) The national proto-type of the metre shall consist of a platinum-iridium bar certified in terms of the international proto-type of the metre by the International Bureau of Weights and Measures.

(2) The national prototype of the kilogram shall consist of a platinum-iridium cylinder certified in terms of the international proto-type of the Kilogram by the international Bureau of Weights and Measures.

(3) The national proto-types shall be kept in the custody of the National Physical Laboratory, Delhi, and the Director shall cause them to be verified and certified before they are deposited in the National Physical Laboratory and at intervals of not more than ten years thereafter.

(4) (1) Reference standards shall be prepared at the Mint and verified and certified in terms of the National prototypes by the Director before they are supplied to State Governments and at intervals of not more than five years thereafter.

(2) A set of reference standards verified and certified by the Director shall be supplied free to each State Government; and, in respect of each subsequent verification, the State Government shall pay transport charges and such verification charges as may be fixed by the Central Government.

5. Where a weight or measure purporting to be a standard weight or measure is manufactured for being used, or used, in any transaction for trade or commerce (hereinafter in these rules referred to as a commercial weight or measure), the limits of error which may be tolerated in commercial weights and measures shall, at the time of their verification and inspection, be as specified in the Second Schedule.

THE FIRST SCHEDULE

[*See* rule 2 (f)]

*Reference Standards Weights*

*Denominations of Reference Standards Weights*

| Kilogram Series | Gram Series | Milligram Series |
|---|---|---|
| 5 | 500 | 500 |
| 2 | 200 | 200 |
| 2 | 200 | 200 |
| 1 | 100 | 100 |
| | 50 | 50 |
| | 20 | 20 |
| | 20 | 20 |
| | 10 | 10 |
| | 5 | 5 |
| | 2 | 2 |
| | 2 | 2 |
| | 1 | 1 |

THE SECOND SCHEDULE

(*See* rule 5)

*Commercial Weights and Measures*

1. *Weights*

| Type of Weights | Denomination of Commercial Weights | Limits of error which may be tolerated at the time of Verification & stamping | Limits of error which may be tolerated at the time of Inspection for other purposes |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | | mg | mg |
| Cast Iron and Steel Weights | 50kg | +20,000 | —10,000 to +20,000 |
| | 20kg | +10,000 | —5,000 to +10,000 |
| | 10kg | +5,000 | —2,500 to +5,000 |
| | 5kg | +3,000 | —1,500 to +3,000 |
| | 2kg | +1,600 | —800 to +1,600 |
| | 1kg | +1,000 | —500 to +1,000 |
| | 500g | +600 | —300 to +600 |
| | 200g | +400 | —200 to +400 |
| | 100g | +320 | —160 to +320 |

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| | | mg | mg |
| Other Weights Except Bullion and Carat Weights | 1kg | +250 | —125 to +250 |
| | 500g | +150 | —75 to +150 |
| | 200g | +100 | —50 to +100 |
| | 100g | +80 | —40 to +80 |
| | 50g | +60 | —30 to +60 |
| | 20g | +50 | —25 to +50 |
| | 10g | +40 | —20 to +40 |
| | 5g | +30 | —15 to +30 |
| | 2g | +20 | —10 to +20 |
| | 1g | +10 | —5·0 to +10 |
| | 500mg | +8·0 | —4·0 to +8·0 |
| | 200mg | +6·0 | —3·0 to +6·0 |
| | 100mg | +4·0 | —2·0 to +4·0 |
| | 50mg | +2·0 | —1·0 to +2·0 |
| | 20mg | +2·0 | —1·0 to +2·0 |
| | 10mg | +1·0 | —0·5 to +1·0 |
| | 5mg | +0·4 | —0·2 to +0·4 |
| | 2mg | +0·2 | —0·1 to +0·2 |
| | 1mg | +0·1 | —0·05 to +0·1 |
| Bullion Weights . . . | 20kg | +500 | —250 to +500 |
| | 10kg | +250 | —125 to +250 |
| | 5kg | +150 | —75 to +150 |
| | 2kg | +80 | —40 to +80 |
| | 1kg | +50 | —25 to +50 |
| | 500g | +30 | —15 to +30 |
| | 200g | +20 | —10 to +20 |
| | 100g | +16 | —8 to +16 |
| | 50g | +12 | —6 to +12 |
| | 20g | +10 | —5 to +10 |
| | 10g | +8 | —4 to +8 |
| | 5g | +6 | —3 to +6 |
| | 2g | +4 | —2 to +4 |
| | 1g | +2 | —1 to +2 |
| | 500mg | +1·6 | —0·8 to +1·6 |
| | 200mg | +1·2 | —0·6 to +1·2 |
| | 100mg | +0·8 | —0·4 to +0·8 |
| | 50mg | +0·4 | —0·2 to +0·4 |
| | 20mg | +0·4 | —0·2 to +0·4 |
| | 10mg | +0·2 | —0·1 to +0·2 |
| | 5mg | +0·2 | —0·1 to +0·2 |
| | 2mg | +0·2 | —0·1 to +0·2 |
| | 1mg | +0·1 | —0·5 to +0·1 |
| Carat Weights . . . | 500 c | +8 | —4 to +8 |
| | 200 ,, | +6 | —3 to +6 |
| | 100 ,, | +5 | —2·5 to +5 |
| | 50 ,, | +4 | —2 to +4 |
| | 20 ,, | +3 | —1·5 to +3 |
| | 10 ,, | +2 | —1 to +2 |
| | 5 ,, | +1 | —0·5 to +1 |
| | 2 ,, | +0·8 | —0·4 to +0·8 |
| | 1 ,, | +0·6 | —0·3 to +0·6 |
| | 50/100 ,, | +0·4 | —0·2 to +0·4 |
| | 20/100 ,, | +0·2 | —0·1 to +0·2 |
| | 10/100 ,, | +0·2 | —0·1 to +0·2 |
| | 5/100 ,, | +0·1 | —0·05 to +0·1 |
| | 2/100 ,, | +0·1 | —0·05 to +0·1 |
| | 1/100 ,, | +0·1 | —0·05 to +0·1 |
| | 0·5/100 ,, | +0·1 | —0·05 to +0·1 |

2. *Liquid Capacity Measures*

| Type of Liquid capacity Measure | Denomination of Commercial capacity measures | Limits of error which may be tolerated at the time of verification & Stamping | Limits of error which may be tolerated at the time of inspection for other purposes |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| | | ml | ml |
| Cylindrical Measures . . | 2 l | +30 | —15 to +30 |
| | 1 l | +20 | —10 to +20 |
| | 500 ml | +15 | —7·5 to +15 |
| | 200 ml | +8 | —4 to +8 |
| | 100 ml | +5 | —2·5 to +5 |
| | 50 ml | +3 | —1·5 to +3 |
| | 20 ml | +2 | —1 to +2 |
| Conical Measures . . . | 20 l | +100 | —50 to +100 |
| | 10 l | +50 | —25 to +50 |
| | 5 l | +30 | —15 to +30 |
| | 2 l | +15 | —7·5 to +15 |
| | 1 l | +10 | —5 to +10 |
| | 500 ml | +8 | —4 to +8 |
| | 200 ml | +4 | —2.0 to +4 |
| | 100 ml | +3 | —1·5 to +3 |

3. *Dispensing Measures*

*Conical Dispensing Measures :—*

Conical dispensing measures have the denominations of 200, 100, 50, 20, 10 and 5 ml. The following are the prescribed permissible errors.

| Capacity Corresponding to Graduation mark | Permissible Error for Measures Except 50 ml (Squat) | Permissible Error for 50 ml (Squat) Measures |
|---|---|---|
| ml | ml | ml |
| 200, 180, 160 | +3·0 to —3·0 | .. |
| 140, 120, 100 | +2·0 to —2·0 | .. |
| 90, 80, 70, 60 | +1·3 to —1·5 | .. |
| 50, 40 | +1·0 to —1·0 | +1·0 to —1·0 |
| 30 | +0·8 to —0·8 | +1·0 to —1·0 |
| 20 | +0 6 to —0·6 | +0·8 to —0·8 |
| 15 | +0·5 to —0·5 | .. |
| 10, 9 | +0·4 to —0·4 | +0.6 to —0·6 |
| 8, 7, 6 | +0·3 to —0·3 | .. |
| 5 | +0·25 to —0·25 | .. |
| 4 | +0·20 to —0·20 | .. |
| 3 | +0·16 to —0·16 | .. |
| 2 | +0·12 to —0·12 | .. |
| 1 | +0·08 to —0·08 | .. |

NOTE.—The permissible errors, apart from those of the 50 ml (squat) measure, apply to graduation marks corresponding to the capacities stated, irrespective of the nominal capacity of the conical measures concerned.

*Breaker Measures.*—For breaker measures presented for checking and stamping, the permissible errors shall not exceed +7 to —7 ml for 1000 ml measure and +5 to —5ml for 500ml measures.

4. *Length Measures*

| Type of length Measures | Denomination of Commercial Length Measures | Limits of error which may be tolerated at the time of verification & stamping | Limits of error which may be tolerated at the time of inspection for other purposes |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| | m | mm | mm |
| Metallic Measure . . . | 1 | +1·0 to —0·5 | +1·0 to —1·0 |
| | 0·5 | +0·5 to —0·25 | +0·5 to —0·5 |
| Wooden Measures . . . | 2 | + 4 to —2 | + 4 to —4 |

The mark at every five centimetre shall not exceed or be deficient by more than 0·25 mm for metallic measure and 1 mm for wooden measure and further the error from the beginning of the measure to any mark shall not exceed 1·0 mm in the case of metallic measures and 2 mm for wooden measures, always, provided that the errors on the full length of the measures shall not exceed the above limits.

[No. F. S.M.C.-15(4)/58.]

K. V. VENKATACHALAM, Jt. Secy.

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*Bombay, the 15th November 1958*

**S.O. 2404.**—In exercise of the powers conferred on me by sub clause (1) of clause 3 of the Cotton Control Order, 1955 I hereby direct that the following amendment shall be made to the Textile Commissioner's Notification No. S.O. 2076 dated the 27th August, 1958, namely:—

In the said Notification, in paragraph 2, for sub-paragraph (8), the following shall be substituted, namely:—

"(8) Nothing in this notification shall apply to—(a) "Cambodia" "C.O. 4" [including "C. O. 4/B-40" "Madras Cambodia Uganda (M.C.U.) 1 and 2"] otherwise known as "Rajapalayam" cotton, "Indo-American" "170-C.O. 2" and '134-C.O. 2M', if they are of staple length 1" and over and comply with the following conditions:—

(i) the cotton has been grown in an area which is a "Protected Area" under the Cotton Transport Act, 1923 or any corresponding Act; or every grower of the variety concerned has registered himself with the Department of Agriculture of the State concerned indicating the area planted;

(ii) the seeds required for sowing such cotton in the relevant areas have been duly approved and supplied by the Department of Agriculture of the State concerned; and

(iii) the ginning and pressing of the crop of such cotton have been done under the supervision of the Department of Agriculture of the State concerned and a certificate of purity has been issued by the said Department for the pressed bales.

(b) "Cambodia C.O. 4" [including "C.O 4/B.40", Madras Cambodia Uganda (M.C.U.) 1 and 2"] otherwise known as "Rajapalayam" cotton, "Indo-American" "170 C.O. 2" and "134 C.O. 2M" to which the conditions specified in items (i), (ii) and (iii) of clause (a) do not apply, and if they are certified by the Committee specified in Schedule 'B' as having a staple length of over 1".

(Sd.) D. S. JOSHI,
Textile Commissioner.

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[No. F. 24(44)-TEX(A)/57.]

*CORRIGENDUM*

*New Delhi, the 15th November 1958*

**S.O.2405.**—In the Ministry of Commerce and Industry Order No. S.O. 2225 dated the 27th October, 1958, published at page 1303 of the Gazette of India Extraordinary, Part II—Section 3—sub-section (ii) dated the 27th October, 1958.

*For*

2. Shri N. N. Mukerjee—Member-Secretary.

*Read*

2. Shri N. M. Mukerjee—Member-Secretary.

[No. 10(45)-TEX(A)/58.]

V. V. NENE, Under Secy.

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ORDER

*New Delhi, the 7th November, 1958*

**S.O. 2406/IDRA/6/11/Am.(3).**—In exercise of the powers conferred by section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby appoints Sarvashri C. J. Lalkaka and A. R. Ramanathan as members of the Development Council established by the Order of the Government of India in the Ministry of Commerce and Industry No. S.R.O. 2821 /IDRA/6/11, dated the 31st August, 1957, for the scheduled industry engaged in the manufacture and production of textiles made of artificial silk, including artificial silk yarn, and directs that the following amendments shall be made in the said Order, namely:—

In paragraph 1 of the said Order under the category of members "being persons who in the opinion of the Central Government are capable of representing the interests of owners of industrial undertakings in the said scheduled industries", after entry No. 5 relating to Shri K. C. Kapadia, the following entries shall be inserted, namely:—

"5A. Shri C. J. Lalkaka, The Century Spinning and Manufacturing Co., Ltd.,
Industry House, 159,
Churchgate Reclamation,
*Bombay-1.*

"5B. Shri A. R. Ramanathan,
The Travancore Rayons Ltd.,
Rayonpuram P. O.,
*Kerala State.*"

[No. 4(63)IA(II)(G)/58.]

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*CORRIGENDUM*

*New Delhi, the 8th November 1958*

**S.O. 2407.**—In the Ministry of Commerce and Industry S.O. No. 1904, dated the 16th September, 1958, published in the Gazette of India Part II Section 3 sub-section (ii) dated the 20th September, 1958:—

*For*

"Shri N. N. Mohan, Dyer Meakin Breweries Ltd., Lucknow."

*Read*

"Shri N. N. Mohan, Managing Director, Dyer Meakin Breweries Ltd. Solan Brewery P.O., (Simla Hills.)"

[No. 4(45)IA(II)(G)/58.]

A. K. CHAKRAVARTI, Under Secy.

**(Indian Standards Institution)**

*New Delhi, the 12th November 1958*

**S. O** 2408 – In pursuance of sub-regulation (1) of regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that five licences, particulars of which are given in the Schedule hereto annexed have been granted authorizing the licenses, to use the Standard Mark.

THE SCHEDULE

| Sl. No. | Licence No. and Date | Period of Validity From | Period of Validity to | Name and Address of the Licensee | Article/Process covered by the licence | Relevant Indian Standard |
|---|---|---|---|---|---|---|
| 1 | CM/L-105 31-10-1958 | 17-11-1958 | 16-11-1959 | Sylvan Plywood Mills, Kottayam. | Tea-Chest Plywood Panels | IS: 10-1953 Specification for Plywood Tea-Chests (*Revised*) |
| 2 | CM/L-106 4-11-1958 | 17-11-1958 | 16-11-1959 | The Mysore Chemical Manufacturers Ltd., Chikbanavar P.O., Bangalore Distt. | Copper Sulphate, Technical | IS:261-1950 Specification for Copper Sulphate, Technical. |
| 3 | CM/L-107 4-11-1958 | 17-11-1958 | 16-11-1959 | The Assam Veneer and Saw Mills Limited, 9 Clive Row, Calcutta-1. | Tea-Chest Plywood Panels | IS:10-1953 Specification for Plywood Tea-Chests (*Revised*). |
| 4 | CM/L-108 4-11-1958 | 17-11-1958 | 16-11-1959 | The Asiatic Plywood Industries, 30 Strand Road, Calcutta-1. | Do. | |
| 5 | CM/L-109 4-11-1958 | 17-11-1958 | 16-11-1959 | Messrs Savlar Paint & Varnish Works, Vihar Lake Road, Saki Naka, Kurla, Bombay-37. | (*i*) Oil Paste for Paints, Zinc Oxide.<br>(*ii*) Oil Paste for Paints, Zinc Oxide, Reduced. | (*i*) IS:98-1950 Specification for Oil Paste for Paints, Zinc Oxide.<br>(*ii*) IS:99-1950 Specification for Oil Paste for Paints, Zinc Oxide, Reduced. |

[No. MDC/12(182).]

C. N. MODAWAL,
*Deputy Director (Marks)*

## MINISTRY OF STEEL, MINES AND FUEL

### (Department of Mines & Fuel)

*New Delhi, the 14th November 1958*

**S.O. 2409.**—In pursuance of sub-section (2) of section 14 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby constitutes a Tribunal consisting of Shri Balmukh Prasad Sinha, Additional District and Sessions Judge, Bihar.

[No. C2-1(9)/57.]

R. N. CHOPRA, Dy. Secy.

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### (Department of Iron and Steel)

*New Delhi, the 17th November 1958*

**S.O. 2410.—ESS.COMM/IRON AND STEEL-2(c)/AM(29).**—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS.COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification in columns 2 and 3 thereof, against 'UTTAR PRADESH', for the existing entry No. 4, the following shall be substituted, namely:—

| 2 | 3 |
|---|---|
| "4. All District Magistrates in the Uttar Pradesh State. | 4, 5, 18, 20, 24 (b), 24 (c), 24(d), and 25 (for Iron and Steel and Scrap.)" |

[No. SC(A)-4(539)]

G. V. RAMAKRISHNA, Under Secy.

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## MINISTRY OF FOOD & AGRICULTURE

### (Department of Agriculture)

### (Indian Council of Agricultural Research)

*New Delhi, the 27th October 1958*

**S.O. 2411.**—In exercise of the powers conferred by sub-section 4(vii) of section 4 of the Indian Lac Cess Act, 1930 (No. 24 of 1930), as amended from time to time, the Central Government is pleased to nominate Shri Raghavendra Rao, Retired Divisional Forest Officer (Vindhya Pradesh Region), Shahdol on the Governing body of the Indian Lac Cess Committee to represent the cultivators of lac in Madhya Pradesh *vide* Shri Mangal Baiga resigned.

[No. 3-84/53-Com.I.]

*New Delhi, the 4th November 1958*

**S.O. 2412**.—In exercise of the powers conferred by Section 17 of the Indian Oilseeds Committee Act, 1946 (9 of 1946) the Central Government hereby makes the following amendment in the Indian Oilseeds Committee Rules, 1947, the same having been previously published as required by sub-section (1) of the said section, namely:—

In sub-rule (2) of rule 3 of the said rules For the word 'thirty', the word 'sixty' shall be substituted."

[No. 6-1/58-Com I/III/ICOCR/AM.(2)/58.]

AJUDHIA PRASADA, Under Secy

## MINISTRY OF HEALTH

*New Delhi, the 13th November, 1958*

**S.O. 2413**. In pursuance of clause (a) of sub-section (2) of section 34 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government hereby nominates to the Medical Council of India as constituted immediately before the 1st November, 1958, the following seven additional members:—

1. Dr D V. Venkappa, President, Indian Medical Association, Madras
2. Dr M L. Kapur President, All India Medical Licentiates' Association Jhansi.
3. Dr. S P Nath, Vice-President, All India Medical Licentiates' Association, Assam Branch, Silchar
4. Dr. N N Bhattacharjee, General Secretary, All India Medical Licentiates, Association 95, Akhil Mistri Lane, Calcutta-9
5. Dr Dinkar Rao, Near Sea Beach, P O. Puri (Orissa).
6. Dr V D Sathaye, 502, Naravan Peth, Poona-2.
7. Dr U. B Narayanrao 1, Nagindas Mansions, Opera Tram Terminus, Girgaum, Bombay-4

[No. F.5-41/58-M I.]

*New Delhi, the 15th November, 1958*

**S.O. 2414**.—Dr U C. Bardoloi (Cal) D R.C O.G. (Lond.), D.G.O. (Dublin) Director of Health Services, Assam, has been re-nominated by the Government of Assam as a member of the Dental Council of India under clause (c) of section 3 of the Dentists Act, 1948 (16 of 1948) with effect on and from the 15th November, 1958.

[No F.6-7/58-M.I.]

KRISHNA BIHARI, Dy. Secy.

## MINISTRY OF TRANSPORT AND COMMUNICATIONS

**(Department of Transport)**

**(Transport Wing)**

*New Delhi, the 22nd November 1958*

**S.O. 2416.**—In exercise of the powers conferred by sub-section (2) of section 1 of the Motor Vehicles (Amendment) Act, 1956 (100 of 1956), and in continuation of the Ministry of Transport and Communications (Department of Transport) Notification S.R.O. No. 2291, dated the 5th July 1957 the Central Government hereby appoints the fifteenth day of January, 1959, as the date on which the provisions of Section 32, clause (f) of Section 98 and Section 101 of the said Act shall come into force.

[No. 3-TL(1)/57.]

D. D SURI, Dy. Secy.

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**(Department of Transport)**

**(Transport Wing)**

MERCHANT SHIPPING

*New Delhi, the 4th November 1958*

**S.O. 2416.**—In pursuance of clause (a) of sub-section (1) of section 213B of the Indian Merchant Shipping Act, 1923 (21 of 1923), the Central Government hereby declares that the Government of Ghana has accepted the Safety Convention as defined in clause (d) of section 213A of the said Act, that is to say, the Convention for the Safety of Life at Sea signed in London on the tenth day of June, nineteen hundred and forty-eight, as amended from time to time.

[No. 46-MA(4)/57.]

*New Delhi, the 8th November 1958*

**S.O. 2417.**—In pursuance of rule 5 of the Indian Merchant Shipping (Seamen's Employment Office, Bombay) Rules, 1954, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Transport No 12-MT(52)/57 dated the 28th August, 1958, namely:—

In the said notification under the heading "I. Seamen's Employment Board (foreign going), for entry No. 4 the following entry shall be substituted and shall be deemed always to have been substituted, namely:—

"4. Director of Employment, Bombay".

[No. 12-MT(52)/57.]

S. K VENKATACHALAM, Deputy Secy.

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## MINISTRY OF IRRIGATION AND POWER

*New Delhi, the 14th November 1958*

**S.O. 2418.**—In exercise of the powers conferred by sub-section (1) section 36 of the Indian Electricity Act, 1910 (9 of 1910), the Central Government hereby makes the following further amendments in the notification of the Government of India in the late Department of Labour No A-807(1), dated the 19th December, 1940, namely:—

In the Schedule to the said notification.—

(i) in the entry relating to North Eastern Railway, the words "Locomotive Component Works Factory at Varanasi" shall be inserted in column 2;

(ii) after the entries relating to North Eastern Railway, the following entries shall respectively be inserted in Columns 1 & 2, namely:—

| 1 | 2 |
|---|---|
| "Chief Electrical Engineer, North East Frontier Railway. | North East Frontier Railway.' |

[No. EL-III-2(5)/58.]

G. D. KSHETRAPAL, Dy. Secy.

## MINISTRY OF WORKS, HOUSING AND SUPPLY

*New Delhi, the 17th November 1958*

**S.O. 2419.**—In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby directs that the method and field of recruitment for the technical gazetted posts in the Government Test House, Alipore, Calcutta, shall be as in the Annexure.

ANNEXURE

*Recruitment Rules for the post of Director, Deputy Director (Chemical), Deputy Director (Physical), Deputy Director (X-Ray).*

| Name of post | No. of posts | Classification | Scale of pay | Whether selection post or non-selection post | Age limit for direct recruit | Educational and other qualification required |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 Director | 1 | General Central Service Class I Gazetted | Rs. 1250-100-1750 (old Rs. 1300-60-1600 prescribed) | Selection | Between 45 and 50 years | *Essential* —<br>(i) Master's or equivalent Honours degree in Chemistry (Pure or Applied) or Physics (Pure or Applied) or degree in Engineering or Metallurgy of a recognised University or equivalent<br><br>(ii) About 10 years' laboratory experience in a recognised laboratory of which about 7 years' should be in a responsible capacity either<br><br>(a) connected with physical examinations and testing of Engineering materials and knowledge of their behaviour, or (b) chemical testing and analysis of materials and finished products.<br><br>Qualifications relaxable at Commission's discretion in case of candidate otherwise well qualified<br><br>*Desirable* —<br><br>Administrative experience in a responsible capacity in a public laboratory. |

*Asstt. Directors Chemical Physical, X-Ray in the Government Test House, Calcutta.*

| Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotee | Period of probation, if any | Method of recrtt whether by direct recrtt or by promotion or transfer & percentage of the vacancies to be filled by various methods | In case of recrtt by promotion/transfer, grades from which promotion to be made | If a DPC exist what is it composition | Circumstances in which UPSC is to be consulted in making recrtt. |
|---|---|---|---|---|---|
| 8 | 9 | 10 | 11 | 12 | 13 |
| Age—No Educational—Yes. | 6 month | By promotion, failing which by direct recruitment | *Promotion* — Dy Directors. | Class I Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 2. Deputy Director (Chemical) | 1 | General Central Service Class I Gazetted. | Rs. 950-50-1200 (old) Rs. 600-40-1000-1000-1050-1050-1100-1100-1150 (prescribed). | Selection | Between 35 & 45 years. | *Essential*:— (i) Master's or equivalent (Hons.) degree in Chemistry (Pure or Applied) or Degree/diploma in Chemical Engineering or Metallurgy of a recognised University/Institute.<br>(ii) About six years' practical experience of which about 3 years should be in a responsible capacity in the field of industrial and analytical chemistry.<br>Qualifications relaxable at Commission's discretion in a case of candidates otherwise well qualified.<br>*Desirable*:—<br>Administrative experience. |
| 3. Deputy Director (Physical). | 1 | General Central Service Class I Gazetted. | Rs. 950—50—1200—(old) Rs. 600—40—1000—1000—1050—1050—1100—1100—1150. (prescribed). | Selection | Between 35 and 45 years. | *Essential*—<br>(i) Master's or equivalent (Hons.) degree in Pure or Applied Physics of recognised University or a degree or equivalent diploma in Mechanical, Electrical, Civil or Metallurgical Engineering of a recognised University/Institute.<br>(*ii*) About 6 years experience, of which 3 years should be in a responsible capacity connected with the field of Industrial Physics and Physical testing of Engineering materials.<br>Qualifications relaxable at Commissions' discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>Administrative experience. |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age—No. Educational—Yes. | 6 months. | By promotion failing which by direct recruitment. | *Promotion*:— Asstt. Director (Chemical) | Class I Departmental promotion Committee. | As required under the rules. |
| Age—No. Educational—Yes. | 6 months. | By promotion failing which by direct recruitment. | *Promotion* :— Assistant Director (Physical). | Class I Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 4. Deputy Director (X-Ray) | 1 | General Central Service Class I Gazetted. | Rs. 600—40—1000—1000—1050—1050—1100—1100—1150. | Selection | Between 35 and 45 years. | *Essential* :—<br>(*i*) Master's or equivalent (Hons.) degree in Pure or Applied Physics or degree or equivalent diploma in Electrical Engineering or Metallurgy of a recognised University/ Institute.<br>(*ii*) About 6 years' experience including 3 years in a responsible capacity connected wiht the field of modern non-destructive methods of testing engineering materials including industrial Radiography, X-Ray Metallurgy and investigation on failures of engineering materials.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>(*i*) Administrative experience.<br>(*ii*) Research qualifications in X-Rays and other non-destructive methods of testing engineering materials. |
| 5. Assistant Director (Physical) (Mechanical) | 1 | General Central Service Class I Gazetted | Rs. 500—50—750—(old) Rs. 350—350—380—380—30—590—EB—30—770—40—850—(prescribed). | Selection. | Between 30 and 40 years. | *Essential* :—<br>(*i*) Degree or equivalent diploma in Mechanical Engineering or Metallurgy of a recognised University/ Institute.<br>(*ii*) About 5 years' practical experience in mechanical testing of engineering materials of diverse types.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>Experience of workshop management and precision engineering measurements. |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age—No. Educational. Yes. | 6 months. | By promotion failing which by direct recruitment. | *Promotion* :— Assistant Director (X-Ray). | Class I Departmental Promotion Committee. | As required under the rules. |
| Age—No. Educational — Yes. | 6 months | By promotion 40 %. By direct recruitment 60%. | *Promotion* :— Senior Physical Asstt. | Class I Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 6. Assistant Director (Physical) (Electrical) | 1 | General Central Service Class I Gazetted. | Rs. 500—50—750 (old) Rs. 350—350—380—380—30—590—EB—30—770—40—850 (prescribed). | Selection. | Between 30 and 40 years. | *Essential* :—<br>(*i*) Master's or equivalent Hons. degree in Applied Physics of a recognised University with specialised knowledge of Electrical Technology or a degree or equivalent diploma in Electrical Engineering of a recognised University/Institution.<br>(*ii*) About 5 year's practical experience in the testing of electrical stores and measuring instruments and photometry of lamps.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>Experience in the running and maintenance of electrical power plants. |
| 7. Assistant Director (Physical) (Civil Engg.) | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380-380-30-590-EB-30-770-40-850. | Selection. | Between 30 & 40 years. | *Essential*:—<br>(i) A degree or equivalent diploma in Civil Engg. of a recognised University or Institute.<br>*OR*<br>A degree in Technology or M.Sc. or equivalent Hons. degree in Physics (Pure or Applied) or Chemistry (Pure or Applied) with specialised knowledge of materials for construction.<br>(ii) About 5 years' experience in a recognised Engineering Laboratory dealing with the testing of building and roads materials or in a Civil Engineering firm of repute dealing with design and testing of materials for road and building construction.<br>(iii) Specialised training in research on or testing of materials of construction.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable*:—<br>Acquaintance with modern methods of testing soils and refractory materials. |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age—No. Educational—Yes. | 6 months | By promotion 40%. By direct recruitment 60%. | *Promotion* :— Senior Physical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. |
| Age—No. Educational—Yes. | 6 months. | By promotion 40 %. By direct recruitment 60 %. | *Promotion*:— Senior Physical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 8. Assistant Director Physical (Metallurgy) | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380-380-30-590-EB-30-770-40-850. | Selection | Between 30 and 40 years | *Essential*:—<br>(i) Degree or equivalent diploma in Metallurgy of a recognised University/Institute.<br>(ii) About 5 years' experience in testing, inspection or manufacture of steel and other metallic-engineering materials and acquaintance with details of metallographical work and technique.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br><br>*Desirable*:—<br>(i) Experience in one or other of the modern methods of non-destrucitve testing of metals and alloys.<br>(ii) Experience in the investigation of failures of engineering materials. |
| 9. Assistant Director (X-RAY) | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380-380-30-590-EB-30-770-40-850. | Selection. | Between 30 and 40 years. | *Essential*:—<br>(i) Master's or equivalent Hons. degree in Pure or Applied Physics of a recognised University/or a degree or equivalent diploma in Electrical Engineering or Metallurgy from a recognised University/Institute.<br>(ii) About 5 years' experience in the field of industrial Radiography including erection and maintenance of industrial X-Ray plant and X-Ray Metallurgy, acquaintance with details of dark room technique and ability to interpret radiographs correctly.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br><br>*Desirable*:—<br>Experience in the investigation of failures of Engineering materials and metallography. |

| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|
| Age-No. Educational—Yes. | 6 months. | By promotion 40 %. By direct recruitment 60 %. | *Promotion*: Senior Physical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. | |
| Age-No. Educational—Yes. | 6 months. | By promotion 40 %. By direct recruitment 60 %. | *Promotion*:— Senior Physical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. | |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 10. Assistant Director Chemical (General) | 1 | General Central Service Class I Gazetted | Rs. 500-50-750 (old) Rs. 350-350-380-380-30-590-EB-30-770-40-850] (prescribed) | Selection | Between 30 and 40 years. | *Essential:*— (i) Master's or equivalent Hons. Degree in pure or Applied Chemistry of a recognised University. *OR* A degree or equivalent diploma in Chemical Engineering of a recognised University/Institute. (ii) About 5 years' experience in analysis of organic and inorganic materials.] Qualifications relaxable at Commission's discretion in case of candidates otherwise well-qualified. *Desirable:*— Knowledge of instrumental methods of chemical analysis like Absorptionetry Polarography and Chromatography. |
| 11. Assistant Director Chemical (Oil) | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380-380-30-590-EB-30-770-40-850. | Selection | Between 30 & 40 years. | *Essential:*— (i) Master's or equivalent Hons. degree in Chemistry (Pure on Applied) or Industrial Chemistry or Chemical Technology of a recognised University or a degree or equivalent diploma in Oil Technology or Chemical Engineering of a recognised University/ Institute. (ii) About 5 years' practical experience in Industry or laboratories dealing with analysis and investigation of Petroleum products including oils and lubricants. Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified. *Desirable:*—Knowledge of Petroleum Chemistry |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age-No. Educational—Yes. | 6 months. | By promotion 40% By direct recruitment 60%. | *Promotion:*— Senior Chemical Asstt. | Class I. Departmental Promotion Committee. | As required under the rules. |
| Age— No. Educational-Yes. | 6 months. | By promotion 40%. By direct recruitment 60%. | *Promotion:*— Senior Chemical Assistant. | Class I Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 12. Assistant Director Chemical (Metallurgy). | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380-380-30-590-EB-30-770-40-850. | Selection | Between 30 & 40 years. | *Essential:*— (i) Master's or equivalent Hons. degree in Pure or Applied Chemistry of a recognised University.<br>*OR*<br>A degree or its equivalent diploma in Metallurgy or Chemical Engineering of a recognised University/Institution.<br>(ii) About 5 years' experience in the analysis of Metals, Alloys, Minerals etc.,<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable:*—<br>Knowledge of modern instrumental methods of chemical analysis like Absorptiometry, Spectrometry, Photometry or Electrometry. |
| 13. Assistant Directors Chemical (Paints-I & II) | 1<br>1<br>2 posts. | General Central Service Class I Gazetted. | Rs. 350-350-380-380-590-EB-30-770-40-850. | Selection | Between 30 and 40 years. | *Essential* :—<br>(i) Master's or equivalent Hons. degree in Chemistry (Pure or Applied) - Industrial Chemistry or Chemical Technology of a recognised University or a degree or equivalent diploma in Chemical Engineering of a recognised University/Institute.<br>(ii) About 5 years' practical experience in industry or laboratories having dealt with analysis and investigations of paints, enamels, Lacquers, varnishes etc.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>Knowledge of recent advances of Polymer Science with special reference to Paint Industry. |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age— No. Educational— Yes. | 6 months | By promotion 40%. By direct recruitment 60% | *Promotion*:— Senior Chemical Assistant. | Class I Departmental Promotion Committee. | As required under the Rules. |
| Age—No. Educational— Yes. | 6 Months. | By promotion 40%. By direct recruitment. 60%. | *Promotion* :— Senior Chemical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 14. Assistant Director Chemical (Standards). | 1 | General Central Service Class I Gazetted. | Rs. 350-350-380 380-30-590-EB-30-770-40-850 | Selection | Between 30 & 40 years. | *Essential* :—<br>(*i*) Master's or equivalent Hons. degree in Pure or Applied Chemistry or a degree or equivalent diploma in Chemical Engineering of a recognised University/Institute.<br>(*ii*) About 5 years' analytical experience including at least 2 years' experience in 2 or more of the following instrumental methods of Physico-Chemical analysis:—<br>Metal Spectroscopy, Polarography, Electrochemical analysis, Electrography, Potentiometry, Aquametry.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>Doctorate degree or long experience in laboratories of repute or foreign training. |

| 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|
| Age—No.<br>Educational—Yes. | 6 Months. | By promotion 40%.<br>By direct recruitment 60%. | *Promotion* :—<br>Senior Chemical Assistant. | Class I. Departmental Promotion Committee. | As required under the rules. |

[No. E. III-10(15)/50-ESI.]

R. RAJAGOPALAN, Under Secy.

## MINISTRY OF REHABILITATION

### (Office of the Chief Settlement Commissioner)

*New Delhi, the 7th November* 1958

**S.O. 2420.**—In exercise of the powers conferred by sub-section (1) of Section 3 of the Displaced Persons (Claims) Supplementary Act, 1954 (No. 12 of 1954), the Central Government hereby appoints Shri A. L. Bahl, as Settlement Officer for the purpose of performing the functions assigned to such officers by or under the said Act, with effect from the date he took charge of his office in the Office of the Chief Settlement Commissioner.

2. The Central Government also appoints the said Officer as Additional Settlement Commissioner for the purpose of performing the functions assigned to such officer by or under said Act with effect from the same date.

[No. 11-B(46)-58/CSC/AI.]

*New Delhi, the 13th November* 1958

**S.O. 2421.**—In exercise of the powers conferred by sub-section (1) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri Inder Lal Panjani as Assistant Settlement Commissioner for the purpose of performing the functions assigned to such officers by or under the said Act with effect from the date he took charge of his office.

[No. 5(14)/Admn/Reg/CSC/58.]

*New Delhi, the 14th November* 1958

**S O. 2422.**—In exercise of the powers conferred by sub-section (1) of Section 6 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) the Central Government hereby appoints for the State of U.P., all officers for the time being holding the posts of Managing Officer Grade II, as Assistant Custodians for the purpose of discharging the duties assigned to Custodian by or under the said Act.

[No. 16(8)Admn(Prop)/58.]

M. L. PURI,

Settlement Commissioner & *Ex-Officio* Under Secy.

## MINISTRY OF LABOUR AND EMPLOYMENT

*New Delhi, the 8th November* 1958

**S.O. 2423.**—In pursuance of the provisions of paragraph 20 of the Employees' Provident Fund Scheme, 1952, framed under section 5 of the Employees' Provident Fund Act, 1952 (19 of 1952) the Central Government has appointed with effect from the 30th September 1958 (afternoon) Shri Megh, Shiam Sharma, as Regional Provident Fund Commissioner for the whole of the State of Uttar Pradesh *vice* Shri Shah Aziz Ahmed, I.A.S.

Shri Sharma shall work under the general control and superintendence of the Central Provident Fund Commissioner.

[No. PF-I/31(498)58.]

**S.O. 2424.**—Whereas immediately before the Employees' Provident Funds Act, 1952 (19 of 1952), became applicable with effect from the 31st July, 1956, to the factory known as the Bengal Waterproof Works (1940), Limited, Calcutta, there was in existence a provident fund common to the employees employed in the factory to which the said Act applies and the employees in their other establishments mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby directs that the provisions of the said Act shall also apply to the aforesaid other establishments.

SCHEDULE

1. Bengal Waterproof Works Ltd., Head Office, 32, Theatre Road, Calcutta—16.

2. Bengal Waterproof Works Ltd., Show Room, 12, Chowringhee Road, Calcutta—13.

3. Bengal Waterproof Works Ltd., Show Room, 86, College Street, Calcutta.

4. Bengal Waterproof Works Ltd., Branch Office, 377, Dadabhai Naoraji Road, Bombay—1.

[No. PF.II-57(28)57.]

**S.O. 2425.**—The Government of Uttar Pradesh, being one of the State Governments specified by the Central Government for the purpose of paragraph 3(1)(c) of the Employees' Provident Funds Scheme, 1952, and having nominated Shri Uma Shanker, I.A.S., Labour Commissioner Uttar Pradesh, Post Box No. 220, Kanpur, on the Board of Trustees constituted under the said Scheme, in the vacancy caused by the resignation of Shri A. D. Pande, I.A.S., the following further amendment is made in the notification of the Government of India in the late Ministry of Labour No. S.R.O. 1861 dated the 31st October, 1952, relating to the constitution of the Board, namely:—

In the said notification, for the entry "8. Shri A. D. Pande, I.A.S., Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow", the entry "8. Shri Uma Shanker, I.A.S., Labour Commissioner Uttar Pradesh, Post Box No. 220, Kanpur" shall be substituted.

[No. PF.II-1(3)/58.]

**S.O. 2426.**—In pursuance of clause (d) of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints Shri R. K. Mehrotra, Joint Secretary, Suti Mill Mazdoor Sabha, 8/78, Arya Nagar, Kanpur, to be a member of the Regional Committee for the State of Uttar Pradesh, in the vacancy caused by the resignation of Shri Virendra Bahadur Singh and directs that the following further amendment shall be made in the notification of the Government of India in the Ministry of Labour No. S.R.O. 1357, dated the 15th April, 1954 namely:—

In the said notification, for the entry "(9) Shri Virendra Bahadur Singh, C/o. Praja Socialist Party, Pandariba, Lucknow", the following entry shall be substituted, namely:—

"(9) Shri R. K. Mehrotra, Joint Secretary, Suti Mill Mazdur Sabha, 8/78, Arya Nagar, Kanpur".

[No. PF.II-45(22)/57.]

**S.O. 2427.**—In pursuance of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby sets up a Regional Committee for the State of Madhya Pradesh, consisting of the following persons, namely:—

*Chairman nominated by the Central Government*

(1) Shri P. D. Chatterji, I.A.S. Secretary to the Government of Madhya Pradesh, Labour Department, Bhopal.

*Two persons nominated by the Central Government on the recommendation of the State Government.*

(2) Shri B. K. Chatterjee, I.A.S., Deputy Secretary to the Government of Madhya Pradesh, Commerce and Industry and Labour Department, Bhopal.

(3) Shri G. M. Shendurnikar, Under Secretary to the Government of Madhya Pradesh, Finance Department, Bhopal.

*Three employers' representatives nominated by the Central Government in consultation with the organisations of employers' in the State.*

(4) Shri G. B. Zalani, Secretary, Madhya Pradesh, Millowners' Association, Indore.

(5) Shri P. B. Adur, Assistant Manager, A. C. C. Ltd., Kymore Cement Works, Kymore.

(6) Shri R. A. Trivedi, M.L.A., Partner M/S. J. A: Trivedi Brothers, Proprietor, Manganese Mines and Collieries, Balaghat.

*Three employees' representatives nominated by the Central Government in consultation with the organisations of employees in the State*

(7) Shri Chhaganlal Katarla, General Secretary, Indore Textile Clerks' Association, Indore.

(8) Shri Tarasing Viyogi, President, Gwalior Mazdur Sangh, Gwalior.

(9) Shri Dwarka Prasad Pathak, Vice President, Jabalpur Bijali Ghar Karmachari Panchayat (House No. 19, Govindganj, Jabalpur.)

[No. PF.II-45(17)/57.]

*New Delhi, the 12th November 1958*

**S.O. 2428.**—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment being a factory known as Messrs. Sohan Knitting Private Limited, 142-C, Delisle Road, Bombay-13, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of said Act to the said establishment.

This notification shall be deemed to have come into force on the 1st day of April, 1958.

[No. PF.II-9(1)58.]

P. D. GAIHA, Under Secy.

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*New Delhi, the 12th November 1958*

**S.O. 2429.**—In exercise of the powers conferred by sub-section (1) of section 21 of the Tea Districts Emigrant Labour Act, 1932 (22 of 1932), the Central Government hereby makes the following further amendment in the Bihar and Orissa Rules framed under the said Act and published with the Government of Bihar and Orissa, Revenue Department Notification No. 241-VIIE-Com.R., dated the 23rd August, 1933, namely:—

In rule 1-A of the said Rules, the following words and figures shall be added at the end, namely:—

"except the territories transferred to the State of West Bengal under the Bihar and West Bengal (Transfer of Territories) Act, 1956".

2. The amendment hereby made shall be deemed to have taken effect from the date of publication of this Ministry's notification No. S.R.O. 2622, dated the 10th August, 1957.

[No. F. PL-23(2)/I/58.]

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*CORRIGENDUM*

*New Delhi, the 12th November 1958*

**S.O. 2430.**—In the notification of the Government of India in the Ministry of Labour and Employment S.O. 2280, dated the 18th October 1958, published at page 2141 of the Gazette of India Part II—Section III—sub-section (ii) dated the 1st November 1958, in the preamble, *for* figures '1949' *read* '1954'.

[No. LWI(1)-6(11)/58.]

BALWANT SINGH, Under Secy.

*New Delhi, the 13th November 1958*

**S.O. 2431.**—Whereas the term of office of the non-official members of the Coal Mines Labour Housing Board constituted by the notification of the Government of India in the Ministry of Labour No. S.R.O. 1730, dated the 29th October, 1951 has expired;

Now, therefore, in pursuance of section 6 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947), read with rules 6 and 8 of the Coal Mines Labour Welfare Fund Rules, 1949, the Central Government hereby appoints the following persons as non-official members to the said Board, Namely:—

Shri D. K. Mondal,
Shri S. N. Mullick,
Shri Ratilal Dave,
Shri Chinmoy Mukherjee,
Shri S. Das Gupta,
Shri Mahesh V. Desai.

[No. MII-3(23)/57.]

B. K. BHATTACHARYA, Dy. Secy.

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*New Delhi, the 13th November 1958*

**S.O. 2432.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the Bombay Dock Labour Board and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA 20/1 GURUSADAY ROAD, BALLYGUNGE, CALCUTTA—19.

REFERENCE No. 4 OF 1958.

The Employers in relation to the Bombay Dock Labour Board, Bombay

AND

Their workmen

PRESENT:

Shri A. Das Gupta, *Presiding Officer.*

APPEARANCES:

Shri H. M. Seervai, Counsel, instructed by Shri K. K. Mehta—*for the Bombay Dock Labour Board.*

Shri R. Setlur of Crawford Bayley & Co. with Shri B. L. Desai—*for the Bombay Stevedores Association Ltd.*

Shri N. V. Phadke, Advocate, instructed by Shri Manohar Kotwal, Secretary Transport & Dock Workers' Union.

Shri H. N. Trivedi, President, Bombay Stevedores and Dock Labourers' Union (INTUC)

AWARD

Government of India, Ministry of Labour & Employment, in exercise of the powers conferred by sections 7A and 10(1)(d) of the Industrial Disputes Act, 1947 has, by its order No. LRII-28(15)/58-II, dated the 16th June, 1958 (S.O. 1187) constituted an Industrial Tribunal with me as the Presiding Officer with headquarters at Calcutta and has referred to me for adjudication an industrial dispute between the employers in relation to the Bombay Dock Labour Board and their workmen. The items of dispute as listed to the Schedule annexed to the Order of Reference are:

1. To what extent are the following demands of the Transport & Dock Workers' Union, Bombay, reasonable and practicable?
2. If the acceptance of any demand in modified form is considered reasonable and practicable, what such modification should be?
   (i) Idle time allowance on account of opening and closing of hatches should be paid.

(ii) Two stevedore tally clerks per hook should be employed on case cargo and iron & steel cargo when work is done in the stream or on overside.

(iii) When work is done in the stream or overside the stevedore tally clerks concerned should be given wrist watches to note down idle time timings and time of time rate work. If the tally clerks are not supplied with wrist watches workmen should be allowed to stop work and the time lost should be treated as idle time.

(iv) One tally clerk should be employed in the hatches to note down timing of time rate work and read the weight marks on the packages with a view to avoid overloading and underloading of slings.

(v) Spare tally clerks should be employed to relieve stevedore tally clerks.

(vi) When cargo is discharged in the stream or on overside in the lighters at least one gang per barge should be employed to assist the bargemen.

(vii) Helping gangs should not be employed by the stevedores in piece rate work without consent from the piece rate workers concerned.

(viii) Sling, trays and other gear should be supplied to the piece rated workers as required by them at the hatches. This supply of gear should be made by time rated gear workers.

(ix) Shoots should be supplied for ore work when demanded by piece rated workers.

(x) Trimming of ore when loading of work is stopped or suspended should be treated as time rate work.

(xi) Gangs, winchmen and hatchforemen should be looked hatchwise and hookwise at the Dock Office in the case of daily pool workers; and at the office of the stevedore employer concerned in the case of monthly workers according to a proper impartial system.

(xii) The Bombay Dock Labour Board should pay Rs. 55/- per month to monthly Tindels, Rs. 35/- per month to senior workers, winchmen, Hatchforemen and Khalasis and Rs. 30/- to Junior Workers per month as "special monthly workers' allowance" with retrospective effect from March, 1956."

2. Copies of the Order of Reference appear to have been forwarded by the Government to the Secretary, Bombay Dock Labour Board, Bombay and the Secretary, Transport & Dock Workers' Union, Bombay. During the pendency of the adjudication proceedings, an application was received on 10-7-1958 from the Bombay Stevedores & Dock Labourers' Union praying that it might be impleaded as a party. The prayer was allowed. On 13-8-1958 a similar application was received from the Secretary, Bombay Stevedores Association, Ltd., with a prayer to be impleaded as a party. The prayer was also allowed. Both the Bombay Stevedores & Dock Labourers' Union and the Bombay Stevedores Association Ltd., were impleaded as parties and they filed their written statements and participated in the adjudication proceedings.

3. *Demand (i)—Idle time allowance on account of opening and closing of hatches should be paid.*

It was represented at the hearing that hatches are not closed except during the rainy season and the employers assured that any time lost, not for the purpose of opening and closing of hatches would be paid for as idle time, even if such time is in continuation of the time occupied in opening and closing the hatches. On this assurance the Unions did not press the demand.

4. *Demand (ii)—Two stevedore tally clerks per hook should be employed on case cargo and iron & steel cargo when work is done in the stream or on overside.*

This demand was not also pressed.

(5) *Demand (iii)—When work is done in the stream or overside the stevedore tally clerks concerned should be given wrist watches to note down idle time timings and time of time rate work. If the tally clerks are not supplied with wrist watches workmen should be allowed to stop work and the time lost should be treated as idle time.*

*Demand (iv)—One tally clerk should be employed in the hatches to note down timing of time rate work and read the weight marks on the packages with a view to avoid over loading and underloading of slings.*

In view of the assurance of the employers that tally clerks would not be required to make any record about the timings in the stream or on overside referred to in the Demand (iii) and that the tally clerks are not and would not be required to record timings of time rated works referred to in Demand (iv), the Unions did not press the Demands (iii) and (iv).

6. *Demand (v)—Spare tally clerks should be employed to relieve stevedore tally clerks.*

Both the Dock Labour Board and the Stevedores' Association have stated in their respective pleadings that arrangements have since been made for the supply of a reliever to the tally clerks. The dispute to which Demand (v) relates does not accordingly survive.

7. *Demand (vi)—When cargo is discharged in the stream or on overside in the lighters at least one gang per barge should be employed to assist the bargemen.*

As a result of some discussions between the parties this demand was not pressed.

8. *Demand (vii)—Helping gangs should not be employed by the stevedores in piece rate work without consent from the piece rate workers concerned.*

The employers assured that helping gangs would not ordinarily be employed. Extra gangs are employed and would continue to be employed on time rates whenever necessary. On this assurance the Unions did not press Demand (vii).

9. *Demand (viii)—Sling, trays and other gear should be supplied to the piece rated workers as required by them at the hatches. This supply of gear should be made by time rated gear workers.*

*Demand (ix)—Shoots should be supplied for ore work when demanded by piece rated workers.*

According to the employers adequate gears and shoots are provided according to necessity and they assured that adequate gears and shoots will continue to be provided whenever necessary. The Unions do not accordingly press these demands.

10. *Demand (x)—Trimming of ore when loading of work is stopped or suspended should be treated as time rate work.*

This demand was not pressed for the present.

11. *Demand (xi)—Gangs winchmen and hatchforemen should be looked hatchwise and hookwise at the Dock Office in the case of daily poolworkers; and at the office of the stevedore employer concerned in the case of monthly workers according to a proper impartial system.*

On the assurance of the employers that on any rational complaint being made about abuse to keep workers outside piece rate, proper investigation would be made and the abuse complained of, if made out, would be corrected, the Unions did not press the demand.

12. *Demand (xii)—The Bombay Dock Labour Board should pay Rs. 55/- per month to monthly Tindels Rs. 35/- per month to senior workers, winchmen, Hatchforemen and Khalasis and Rs. 30/- to Junior workers per month as "special monthly workers' allowance" with retrospective effect from March, 1956.*

A preliminary objection has been raised on behalf of the Dock Labour Board and the Bombay Stevedores' Association that the present adjudication proceedings so far as they relate to the Unions' demand for a monthly allowance to the monthly rated tindels, winchmen, senior workers, khalasis and junior workers are barred by a decision of the Special Bench of the Labour Appellate Tribunal on the principle of *res judicata*.

13. For a clear appreciation of the preliminary objection as also the contentions of the parties a short history of the wage structure of the stevedore workers is of some importance. The different categories of the stevedore workers employed in the loading and unloading of cargo or in connected jobs are both monthly rated and daily rated. Prior to July 1953, the wages of the monthly rated workers were fixed at approximately 26 times the daily wages of the daily rated workers of the corresponding categories. With a view to regulate employment of stevedore

labour, Dock Workers (Regulation of Employment) Act, 1948 was enacted and in exercise of the powers conferred by section 4 of the Act, the Government of India made schemes for the different major ports in India. The first scheme for Bombay called the Bombay Dock Workers (Regulation of Employment) Scheme came into force in 1951. The scheme has since been modified by another scheme substantially on the same lines in 1956. Under both the schemes although the day to day control of the stevedore workers was with the stevedore companies or the administrative body, the supreme control was with a Board called the Bombay Dock Labour Board. The Dock Labour Board was responsible for administration of the Scheme and due discharge of the manifold responsibilities under the Scheme. Under clause 33 of the scheme of 1951, the Bombay Dock Labour Board was the sole authority to fix the wages of the workmen. Clause 33 of the Scheme of 1951 corresponds to clause 41 of the scheme of 1956. The service conditions as prescribed by the Bombay Dock Labour Board do not permit the monthly rated workers being employed for the second shift so long as the daily pool workers were available. They cannot also be employed on Sundays and holidays except under special circumstances. As a consequence the daily rated pool workers earned more than the monthly rated workers of the corresponding categories. The monthly rated workers started agitations and with a view to compensate them for the lower earnings, the stevedore companies allowed the monthly rated workers liberal increases in July 1953. The following tabular statement will indicate the wage structure of the daily and monthly rated workers under the stevedores:

| Workers | Wages prior to July 1953 | | Increase in July 1953 given by stevedoring companies to monthly rated workers | Total wages of the monthly rated workers from July 1953 |
|---|---|---|---|---|
| | Daily | Monthly | | |
| | Rs. A. P. | Rs. A. P. | Rs. A. P. | Rs. A. P. |
| Tindel | 5 4 0 | 138 0 0 | 55 0 0 | 193 0 0 |
| Winchmen | 4 4 0 | 113 0 0 | 35 0 0 | 148 0 0 |
| Hatchforemen | 4 4 0 | 113 0 0 | 35 0 0 | 148 0 0 |
| Khalasis | 4 4 0 | 113 0 0 | 35 0 0 | 148 0 0 |
| Sr. Gang Workers | 4 4 0 | 113 0 0 | 35 0 0 | 148 0 0 |
| Jr. Gang Workers | 3 14 0 | 103 0 0 | 30 0 0 | 133 0 0 |

14. One of the main activities of the Port is directed towards quick turn rounds of ships. Ships are carriers and owners suffer huge losses when the ships are not moving across the sea with freight. Detention of ships which was mostly due to delay in loading and unloading had been in the past a headache of all concerned, and the authorities set themselves to devise ways and means for regulating employment of dock labour with a view to facilitate quick turn rounds of ships. Satisfactory results may be possible only by co-ordinated efforts of the three parties which are as it were three limbs for the work. They are the shore workers, crane drivers and the stevedore labour. Shore workers handle cargo on the wharfs and in transit sheds while the stevedore labour works on board the ships and load and unload cargo in and from the ships. The crane men are, as it were, a linchpin in the operation of loading and unloading. The decasualization scheme introduced in April 1948 for regulating employment of the shore workers, and the scheme under the Dock Workers (Regulation of Employment) Act for regulating employment of stevedore labour had not the desired effect. Delay in the discharge of vessels continued and there were complaints from the shipping companies There were conferences and negotiations without any positive result. The workers and the employers could not come to any agreement Government of India, Ministry of Labour, in its anxiety to have a definite solution, referred the matter to Shri M. R. Meher, Chairman of the Industrial Court, Bombay, for devising a suitable wage system. The workers were generally on time rate and Shri Meher was called upon to adjudicate, among other things, as to whether the time rate system should be

replaced by piece rate system. The main item for adjudication was as indicated below:

"(1) Shore workers, stevedore workers, crane men and tally clerks:

(i) Is the present wage system satisfactory from the point of view of—

(a) ensuring a fair out-turn of work, and

(b) a fair wage to the workers.

If not what changes are necessary? In particular should the present system be replaced by a piece rate system?

What safeguards should there be to ensure:

(a) a minimum wage to workers, and

(b) a minimum out turn.

What provision should there be for offering an incentive for increased production?"

15. Shri Meher gave an award which was published in the extraordinary issue of the Gazette of India dated 13th June, 1955.

16. In the present adjudication we are concerned only with the monthly rated stevedore workers coming under the categories Tindels, Winchmen, Hatch-foremen, Khalasis, Senior Gang Workers, and Junior Gang Workers, and the term workers mentioned in this award shall refer to these categories of stevedore workers. The award which Shri Meher gave included the Tindels, Winchmen, Senior Gang Workers, Hatch Foremen, Junior Gang Workers, Reserve Pool Workers and Khalasis. Khalasis both daily rated and monthly rated were at par with Hatch Foremen, Winchmen and Senior Gang Workers. These workers with the exception of Khalasis were put on a piece rate scheme, and for the purpose of processing piece rate, Shri Meher gave the following allowances to the daily rated workers:

| | | |
|---|---|---|
| Tindels | Annas | 0-12-0 |
| Winchmen | " | 0-11-0 |
| Senior Gang Workers and Hatch Foremen | " | 0- 9 -0 |
| Junior Gang Workers and Reserve Pool Workers | " | 0- 8 -0 |

Although the winchmen were getting the same scale of pay as the Hatch Foremen, Khalasis and Senior Gang Workers, Shri Meher gave the winchmen a higher allowance holding that winchmen required greater skill than the other workers with whom they were bracketed. Shri Meher felt some difficulty to put the Khalasis, both daily rated and monthly rated on any piece rate scheme. But as Khalasis had hitherto been at par with the Hatch Foremen and Senior Gang Workers, Shri Meher directed that the Khalasis should continue to get the same time rated wages as had been awarded to the Hatch Foremen and Senior Gang Workers. The daily rated Khalasis were accordingly given an increment of Annas 0-9-0 per day.

17. The monthly rated workers, whose wages had been increased in July 1953 were not given any further increment by Shri Meher. Referring to the actual figures of increments in the wages of the monthly rated workers given by the stevedore companies, Shri Meher observed:

> "In view of these liberal increases there is no case for any further increase in their wages I direct that they be paid piece rates according to the same scale and subject to the same conditions as those laid down by me for the daily stevedore workers at Appendix D, but they will also be entitled to be credited with the differential between the wage which has entered into the calculation of piece rate (Rs. 4-6-0 per day) and their present wage calculated by dividing their monthly wages by 30. They will get the time rate pay for weekly offs and holidays."

18. Although the increase as granted by the Stevedoring Companies to the monthly rated workers were unauthorised and hence invalid, Shri Meher did not interfere but allowed the then earnings of the monthly rated workers to stand. For the purpose of their daily rates, the monthly rates were to be divided by 30, and they were to get pay for weekly offs and holidays at the daily rates thus arrived at. Obviously, Shri Meher did not alter the position of the monthly rated workers except in respect of those who were placed on piece rates for piece rate works actually performed. According to Shri Meher's award, the Khalasis—both

daily rated and monthly rated—were still to be at par with the corresponding Hatch Foremen when they were on time rates.

19. There was an appeal to the Labour Appellate Tribunal against Shri Meher's award and the appeal was heard by Special Bench of the Labour Appellate Tribunal at Bombay. While the shore gang workers under the Bombay Port Trust were getting Rs. 3-8-0 per day, the daily wages of the junior stevedore gang workers were raised by a settlement arrived at between the Stevedores Association and the Stevedore workers on 13th November, 1948 to Rs. 3-14-0. In July 1951, the Port Trust workers were given an additional dearness allowance of Rs. 5 per month which worked out to annas 0-3-0 per day. The total wages of the Port Trust gang workers were thus increased to Rs. 3-11-0 and the difference between the wages of the lowest paid workers under the Bombay Port Trust and the Bombay Stevedores was annas 0-3-0. The Labour Appellate Tribunal was reluctant to widen this differential of annas 0-3-0 as Shri Meher had done, and reduced the processing allowances from annas 0-12-0, 0-11-0, 0-9-0 and 0-8-0 to annas 0-9-0, 0-8-0, 0-6-0 and 0-5-0 respectively. The Labour Appellate Tribunal appreciated the reasons of the primary tribunal in placing the winchmen on a higher level of wages than the Hatch Foremen and Senior Gang Workers and upheld the differential of annas 0-2-0 created by the award of Shri Meher in the wages of the winchmen and directed:

> "Corresponding to this differential between these two sets of workers, the existing wage of the monthly paid winchmen shall stand increased from Rs. 113 to Rs. 116-4-0, and that of the daily paid winchmen from Rs. 4-4-0 to Rs. 4-6-0."

20. About the increase in wages given by the Stevedore Companies to the monthly rated workers, the Labour Appellate Tribunal observed:

> "The original conditions which necessitated the increase no longer exist and the maximum number of shifts that a worker can be given in the month is now restricted to 33. The reason for the increased wages of the monthly workers, therefore, is no longer present, and the increased monthly wage do not form a proper basis for fixing the piece rate."

21. Two objections were raised before the Labour Appellate Tribunal about the jurisdiction of the Tribunal to reject the increments.

(1) It involved an unasked for reduction of wage which was being paid to these workmen.

(2) The point was not covered by the grounds taken on appeal.

22. As regards the first objection, the Labour Appellate Tribunal held that the increase given by the Stevedore Companies was without any legal sanction and could not be recognised as a wage:

> "When, therefore, we specify as the existing wage the wage that has been sanctioned by the Dock Labour Board, we are not making any reduction in wage."

The Labour Appellate Tribunal proceeds further:

> "In its written statement the Dock Labour Board made it clear that it did not sanction the increase. The Stevedores Association was in a more difficult position as the increase in question was made by it. It has attempted to get round the difficulty by describing the additional remuneration as 'special allowance'. It observed that consistently with the introduction of a piece rate system, the need for the special allowance for monthly paid workers will cease. This is a clear request for a piece rate system based on legal wage, that is to say the wage sanctioned by the Dock Labour Board."

23. Shri Phadke contends that although the Labour Appellate Tribunal did not recognise the increments in wages for the purpose of processing the piece rates, it did not in terms reject the increments. So far as Khalasis both daily rated and monthly rated are concerned, the Labour Appellate Tribunal excluded them altogether from the adjudication. I shall deal with the case for the monthly rated Khalasis later. So far as the other categories of monthly rated stevedore workers are concerned, the Labour Appellate Tribunal in clear terms held that the addition to the wages had no legal sanction and could not be regarded as wages. The Labour Appellate Tribunal then proceeded to calculate the total earnings of the monthly rated workers for normal output under the piece rate scheme devised by it. The calculations were made on the legal wages leaving out the unauthorised increments. The workers are expected to put in the normal output which was fixed by the award as modified by the Labour Appellate Tribunal and described as the norm or the datum line. In a month for normal output the monthly rated workers were to get their piece rate earnings computed on the daily wages of the daily rated workers of the lowest category with the processing allowance of annas 0-5-0 and an additional allowance of annas 0-5-0 on 100 per cent output for 26 working days plus the differential of the daily rated workers of the corresponding categories for the 26 days and wages for the 4 weekly off days at their respective daily rates being their monthly wage divided by 30. The total monthly earnings of the different categories of monthly rated workers as awarded by the Labour Appellate Tribunal are indicated in column 7 of the table which is Annexure I to this award. Column 10 represents the monthly earnings of the monthly rated workers if they are allowed to retain the illegal increments given by the Stevedore Companies. There are sufficient indications in the decision of the Labour Appellate Tribunal that the illegal increments were disallowed. Now the workmen demand these increments as special allowances. Shri Phadke urges the following grounds to justify the special allowances:

(1) The monthly workers as a class rank as senior most workers in their respective categories and have acquired more efficiency by their longer experience.

(2) The monthly workers have no scales of increment.

(3) The increments were enjoyed by the monthly workers for several years and had thereby become a term and condition of their service.

(4) Increments counted towards Provident Fund and gratuity. Since the discontinuance of the increments their retiring benefits have been very much adversely affected. In the same way the leave pay and the holiday pay of the monthly rated workers have been very much affected.

(5) In Calcutta the wages of the monthly rated stevedore workers are much higher than the existing wages of the Bombay stevedore workers.

24. As regards the first ground the extra experience which the monthly workers have are likely to stand them in good stead. The monthly workers by their experience and efficiency will be able to give a higher output than the daily rated workers and to earn more. The original conditions which necessitated the increase does no longer exist. The monthly workers are in a better position than the daily rated workers inasmuch as they are paid for the weekly off days. Now there is no justification whatsoever for the allowances to the monthly rated workers and thereby creating a wide disparity between the daily rated and the monthly rated workers.

25. The second ground does not arise inasmuch as with experience and efficiency the output and hence the earnings are likely to be increased.

26. Illegal benefits enjoyed for any length of period do not become terms and conditions of the service of the workmen. Benefits accruing from illegal increments cannot be claimed as terms and conditions of service. Shri Seervai has placed before me some tables which have been marked Exhibit E/1 series to indicate how the monthly earnings of a monthly rated worker working for all the working days of a month have increased under the piece rate scheme. The enormous increase in the earnings of the monthly rated workers under the piece rate scheme outweigh the benefits which accrued from the illegal increments to them in respect of Provident Fund contribution, gratuity, leave pay and holiday pay.

27. Ground (5): This point appears to have been considered by the Special Bench of the Labour Appellate Tribunal in the Bombay Dock Labour Appeals in paragraph 113. The question whether the principle of Res Judicate is applicable in the field of industrial dispute came up before their Lordships of the Hon'ble Supreme Court in the case of Messrs. Burn & Co., Howrah (1956 L.A.C. p. 799). The question has been set at rest by the decision of the Hon'ble Supreme Court according to which alteration or modification of the previous award is permissible only on the proof of a change in the basic circumstances. According to their Lordships any other view would be contrary to the well recognised principle that a decision once rendered by a competent authority on the matter and the issue between the parties after a full enquiry should not be permitted to be reagitated. With a view to avoid the legal bar the Union has claimed the illegal increments as allowances. Under whatever head the Union may place its demand the fact remains that the demand related only to the increments that had been disallowed by the Labour Appellate Tribunal in the Bombay Dock Labour Appeals. It is admitted that the decision is still in force and the award as modified by the decision of the Labour Appellate Tribunal has not yet been terminated by any party. There are sufficient indications in the decision of the Labour Appellate Tribunal, as I have already stated, that the increments were disallowed. The decision of the Labour Appellate Tribunal bars further agitations on the demand on principles of Res Judicata at least in respect of the monthly rated Tindels, Winchmen, Senior Gang Workers, Hatch Foremen and Junior Gang Workers. I have considered the Unions' demands of the special allowance for these monthly rated workers and I am definitely of the opinion that the demand is not tenable.

28. About the monthly rated khalasis, the Labour Appellate Tribunal having excluded them from the adjudication proceedings which led to appeal before it, the decision of the Labour Appellate Tribunal may not operate as Res Judicata but the fact remains that on the merit the demand for increments for the monthly rated Khalasis is equally untenable. Their wages had all along been at par with the daily time rate wages of the Hatch Foremen and the Senior Gang Workers and there is no ground for different treatment in respect of the monthly rated khalasis. The demand is accordingly rejected.

29. I acknowledge with thanks the assistance I received from the parties and their representatives.

A. DAS GUPTA,
Presiding Officer,
Central Government Industrial Tribunal, Calcutta.

*Calcutta,*
*The 29th October* 1958.

ANNEXURE I

| Categories | Daily total wages of daily rated workers | Processing Rate | Additional payment for 100% output |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | Rs. A. P. | Rs. A. P. | Rs. A. P. |
| Tindel | 5 4 0 | 5 13 0 | 0 5 0 |
| Senior Gang Worker / Hatch Foreman | 4 4 0 | 4 10 0 | 0 5 0 |
| Winchman | 4 1 0 | 4 12 0 | 0 5 0 |
| Junior Gang Worker | 3 14 0 | 4 3 0 | 0 5 0 |

| Total wages of monthly rated workers as sanctioned by Dock Labour Board | | Total monthly earning on Piece Rate Scheme for normal output | Total wages of monthly rated workers as increased by Stevedores | | Total monthly earnings on Piece Rate Scheme on the increased wages (for normal output) |
|---|---|---|---|---|---|
| Monthly | Daily | | Monthly | Daily | |
| 5 | 6 | 7 | 8 | 9 | 10 |
| Rs. A. P. | Rs. A. P. | Rs. A. P. | Rs. A. P. | Rs. A. P. | Rs. A. P. |
| 138 0 0 | 4 9 7 | 177 10 5 | 193 0 0 | 6 7 0 | 193 0 0 |
| 113 0 0 | 3 12 3 | 143 7 0 | 148 0 0 | 4 15 0 | 148 0 0 |
| 116 4 0 | 3 14 0 | 147 2 0 | 148 0 0 | 4 15 0 | 151 4 0 |
| 103 0 0 | 3 6 11 | 130 11 0 | 133 0 0 | 4 7 0 | 133 0 0 |

[No. LR-IV-28(15)/58.]

*CORRIGENDUM*

*New Delhi, the 15th November 1958*

**S.O. 2433.**—In the order of the Government of India in the Ministry of Labour and Employment S.O. 1500, dated the 17th July 1958, published on page 1292 of the Gazette of India, Part II, Section 3 sub-section (ii), dated the 26th July, 1958, *for* "Coal Workers" occurring in item 2 of the Schedule annexed to the order, *read* "cargo workers".

[No. LRIV-28(19)/58.]

*New Delhi, the 18th November 1958*

**S.O. 2434.**—In the order of the Government of India in the Ministry of Labour and Employment No. S.O. 2278, dated the 25th October, 1958, published at pages 2139-2140 of Part II Section 3 Sub-section (ii) of the Gazette of India, dated the 1st November, 1958:—

*For* "April 1948" in item 2 of the Schedule II appended to the said order, *read* "April 1958".

[No. LR-IV-28/58.]

R. C. SAKSENA, Under Secy.

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*New Delhi, the 18th November, 1958*

**S.O 2435.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Central Kirkend Colliery of the Central Kirkend Coal Co (Private) Ltd. and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE NO. 12 OF 1957

PARTIES:

Employers in relation to the Central Kirkend Colliery *i.e.* the Central Kirkend Coal Co. (Private) Limited.

AND

Their workmen represented by the Bihar Colliery Mazdoor Sangh (now known as Colliery Mazdoor Sangh).

*Dhanbad, dated the 1st November, 1958.*

PRESENT:

Shri Salim M. Merchant, B.A., LL.B., *Chairman.*

APPEARANCES:

Shri S. S Mukherjea, Advocate, and Shri D. Narsingh, Advocate, instructed by Shri S. C. Jain, Director—*for the Employers.*

Shri D. L. Sen Gupta, Advocate, with Shri Ajodhya Prasad Gupta, Organising Secretary, and Shri B N Sharma, Member, Executive Committee, Colliery Mazdoor Sangh—*for the workmen.*

State: Bihar. Industry: Coal.

AWARD

The Government of India, Ministry of Labour and Employment, by Order No. LR.II/55-1(46)/57 dated 12th October 1957 on the joint application of the parties above named have been pleased in exercise of the powers conferred by sub-sec (2) of sec. 10 of the I.D. Act 47 (XIV of 47) to refer to me for adjudication the industrial dispute in respect of the matters specified in the said application and reproduced in the following schedule to the said order:—

"1. Whether the employment of a contractor and/or a commission Agent by the management is justified or not.

2. Whether the termination of service without payment of retrenchment compensation on ground of physical infirmity of Barha Mahato—haulage road cleaner, Shri Kali Dhobi-onsetter, Ishwar Dusad winding engine Khalashi, Dukharan Pasi-Trammer, Reba Chamar—Mining Sirdar, Bihari Ram—Miner, Uman Dhobi—Prop. cooly is justified or not and if not to what relief, if any they are entitled.

3. Whether the non-provision of a light job to Uman Dhobi—Prop. Cooly and Bihari Ram—miner on the recommendation of a medical doctor is justified or not and if not what relief, if any, they are entitled to.

4. Whether the fixation of the rate for machine cut coal loaders and its change from Rs. 1-14-3 per tub to Rs. 1-2-9 is justified or not and what relief if any these workers are entitled to.

5(a) Whether the stoppage of the payment of incentive bonus to machine drivers is justified or not and what relief, if any, they are entitled to.

(b) Whether the trammers are entitled to proportionate increase in rate on the increase of the size of the tub from 30 c.ft to 36 c.ft."

2. After the usual notices were issued the Colliery Mazdoor Sangh, after obtaining two extensions filed its written statement of claim on 30th November 1957 and the employers filed its written statement in reply on 4th January 1958. Thereafter both parties obtained several long adjournments on the ground that they were negotiating for a mutual settlement. As, however, no settlement was reached at the adjourned hearing on 29th October 1958, the dispute was taken up for hearing and it continued till 31st October 1958 on which date after prolonged discussion between themselves and with the assistance of this Tribunal, the parties were able to reach a settlement on all the demands under reference. The terms of settlement are recorded in the joint application of the parties filed on 31st October 1958, a copy of which is annexed hereto and marked Annexure 'A'. The parties have prayed that an award be made in terms of the said settlement. As I am satisfied that the terms of settlement are fair and reasonable, I make an award in terms of Annexure 'A' which shall form part of this award.

3. No order as to costs.

(Sd.) SALIM M. MERCHANT,
Chairman.
Central Govt. Industrial Tribunal, Dhanbad.

Dhanbad,
*The 1st November* 1958.

ANNEXURE 'A'

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 12 OF 1957.

PARTIES:

Employers in relation to the Central Kirkand Colliery *i.e.* the Central Kirkand Coal Co (Private) Ltd.

AND

their workmen represented by the Bihar Colliery Mazdoor Sangh (now known as Colliery Mazdoor Sangh).

May it please your Honour:

We the parties to the above dispute have reached the following settlement on the demands under reference and pray that an award be made in terms thereof.

*Demand No.* 1—

The management agrees not to employ labour through any Raising Contractor, Contractor or Commission Agent for raising coal either on surface or underground. The management further undertakes that whatever contract labour for other work is employed by it such labour will be paid wages directly by it as fixed by the award in force and such workmen shall be given the service benefits fixed by the award in force.

With regard to the Re-Chive Hard Coke Ovens and the Soft Coke manufacture, it is agreed that the management will not engage any contractor or Commission Agent for that work. But it shall be at liberty to engage a Supervisor of its own choice but the management agrees to pay the workmen directly.

*Demand Nos. 2 and 3*—

The parties are agreed that the company shall pay each of the 7(seven) workmen mentioned in these 2 two demands gratuity at the rate of one month's basic wage last drawn for each completed year of service since 1936. It is agreed that the gratuity due to Kali Dhobi (since diseased) shall be paid to his widow. It is agreed that the period of completed years of service in each case is to be calculated from 1936 *i.e.* of 21 years.

*Demand No. 4*—

It is agreed that those of the M.C.C. loaders who continue to work as such after the notice dated 6th May 1957 shall be entitled to payment at the rate of Rs. 1-11-7 per tub made up of basic wage, dearness allowance, and underground allowance and the difference between that rate and the rate of Rs. 1-2-9 per tub shall be made good by the management within one month from the date of this agreement. It is further agreed that such of the M.C.C. loaders who were working as such on the date machine cutting was stopped, shall be engaged as M.C.C. loaders on their old rates of Rs. 1-11-7 on the re-starting of the machine cutting, on their reporting for work within one month from the date of the receipt of the notice from the management intimating re-starting of machine cutting work.

The difference in rates between Rs. 1-11-7 and Rs. 1-2-9 per tub shall also be paid to all those M.C.C. loaders who might have worked as such for any length of time after the company's notice of 6th May 1957. The above rate is exclusive of payment of lead and lift, pushing of tubs, and efficiency bonus at six pies per tub to whom-so-ever it was payable. This rate shall also be paid for the arrear period.

This will however not apply to the new M.C.C. loaders appointed after 6th May 1957 who shall be paid at the awarded rate of Rs. 1-2-9 per tub of 30 c.ft comprising of basic wage, dearness allowance and underground allowance only. They will be entitled to payment for lead and or lift, pushing tubs and efficiency bonus whenever arise.

*Demand No. 5(a)*—

It is agreed that no incentive bonus will be paid to machine drivers for the first cut but for the second cut incentive bonus will be paid at the rate of Re. 0-2-6 and for the third cut at the rate of Re. 0-5-0 and for fourth cut at the rate of Re. 0-7-6 and for the fifth cut at the rate of Re. 0-10-0. This will be the rate for the arrears payment to be made to all machine drivers in all the pits for the period from 29th April 1957 till machine cutting was stopped in September 1958.

The rate for machine drivers after the re-starting of the machine cutting work will be settled by mutual agreement between the parties.

*Demand No. 5(b)*—

The management agrees to pay trammers for 36 c.ft tubs 12½ per cent more than the rate that was paid for 30 c.ft tubs with effect from the date the 36 c.ft tubs were introduced in the colliery, except in Pit No. 4 where the rate to be paid to the Trammers for 36 c.ft tubs is to be referred to the Conciliation Officer (Central), Dhanbad, as an industrial dispute.

It is further agreed that all payments due to the workmen under this agreement shall be made within one month from the date of this agreement

S. C. JAIN,
Director General Kirwend Coal Co. Ltd
For the Workmen:
AJODHYA PARSAD GUPTA,
Organising Secretary, Colliery Mazdoor Sangh.

Dhanbad,
*The 31st October*, 1958.

Witnesses:
D. NARSINGH,
D. L. SENGUPTA,

Taken on file.

(Sd.) SALIM M. MERCHANT,
Chairman,
Central Government's Industrial Tribunal, Dhanbad.

[No. LRII/55-1(46)/57]

## ORDERS

*New Delhi, the 8th November*, 1958

**S.O. 2436.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Tulsidas Khemjee and their workmen, regarding the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A, and clause (d) of sub-section (1) of section 10, of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri F. Jeejeebhoy, Chairman, Labour Appellate Tribunal, as the Presiding Officer, with headquarters at Bombay, and refers the said dispute to the said Tribunal for adjudication.

SCHEDULE

Quantum of bonus payable to the workmen for the year ending 31st October 1957 and the conditions governing its payment.

[No. LRIV-28(41)/58.]

**S.O. 2437.**—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the Noonadih Jitpur Colliery of Indian Iron and Steel Co. P.O. Bhaga and their workmen in respect of the matter specified in the schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of the Noonadih Jitpur Colliery is justified in placing the following eight loading munshis in the scale of Rs. 31—1—40 after the introduction of the Award of the All India Industrial Tribunal (Colliery Disputes) as modified by the Labour Appellate Tribunal having regard to the gradation of clerical staff mentioned in Appendix XVI, Volume II of the said Award and if not, to what relief they are entitled: –

(1) Shri Satish Ojha.
(2) Shri Gaya Pd. Singh.
(3) Shri N. K. Chakravarty.
(4) Shri Badal Ch. Roy.
(5) Shri Shanti Sarkar.
(6) Shri Guru Pada Mookherjee.
(7) Shri Deodhari Tewari
(8) Shri Shanti Pada Ghose.

[No. LRII-2(143)58.]

*New Delhi, the 12th November 1958*

**S.O. 2438.**—Whereas the Central Government is of opinion that an industrial dispute exists between M/S Tata Iron and Steel Co. Ltd., Jamadoba and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers confered by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

(a) Whether the management's order directing Shri Mishri Singh, Peon, to vacate the double room quarter at Jamadoba and occupy a single room quarter at Malkera is *bonafide*;

(b) if not, to what relief he is entitled.

[No. LR II.2(141)58.]

*New Delhi, the 14th November 1958*

**S.O. 2439.**—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the Mudidih Colliery, P O Sigua, Dhanbad, and their workmen in respect of the matters specified in the Schedule hereto annexed,

And Whereas the Central Government considers it desirable to refer the said dispute for adjudication,

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act

SCHEDULE

Whether the categorisation of Shri Bachan Prasad by the management as Mining Sirdar, class II, and his dismissal with effect from the 17th September, 1957, justified and if not, to what relief he is entitled.

[No LRII-2(152)58]

*New Delhi, the 15th November 1958*

**S O. 2440.**—Whereas certain workmen of the Central Bank of India Limited represented by the U P Bank employees Union (Kanpur Unit) have demanded payment of conveyance allowance to the godown keepers in respect of their official visits to godowns to and from the Bank's premises under paragraph 548 of the award of the All-India Industrial Tribunal (Bank Disputes), Bombay, constituted by the notification of the Government of India in the Ministry of Labour No S R O 35, dated the 5th January, 1952, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955),

And whereas the Central Government is of opinion that a difficulty or doubt has arisen as to the interpretation of paragraph 548 of the said award in respect of the matter specified in the schedule hereto annexed,

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section 6 of the said Act, the Central Government hereby refers the said matter for decision to Shri P D Vyas, Member, Labour Appellate Tribunal, constituted under section 5 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950).

SCHEDULE

Whether having regard to the terms of appointment and the nature of duties expected of them and the provisions of paragraph 548 of the Award of the All-India Industrial Tribunal (Bank Disputes) constituted by the notification of the Government of India in the Ministry of Labour No S R O 35, dated the 5th January, 1952, modified as aforesaid, the godown keepers of the Central Bank of India Limited are entitled to claim any conveyance allowance in respect of their official visits to godowns to and from the premises of the Bank and, if so, whether such allowance should be paid even in cases where cycles are provided by the Bank for the purpose.

[No LR-II-10(77)/58]

K. D. HAJELA, Under Secy.

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*CORRIGENDUM*

*New Delhi, the 15th November 1958*

**S O. 2441**—In the late Ministry of Labour notification No S R O 3170, dated the 20th December 1956, published at page 2237 in the Gazette of India, Part II, Section 3, dated the 29th December, 1956, in column II, against item (1) in the "Table" below the said notification, *for* "Social Service", *read* "Social Science".

[No M-III/34(14)/58]

S. RANGASWAMI, Under Secy.

## MINISTRY OF INFORMATION AND BROADCASTING

*New Delhi, the 7th November* 1958

**S.O. 2442.**—In exercise of the powers conferred by sub-section (2) of section 5 of the Cinematograph Act, 1952 (37 of 1952), the Central Government hereby directs that the film entitled "Desire Under The Elms" and its trailer produced by Paramount Pictures Corporation, U S A, shall be deemed to be uncertified films in the whole of India.

[No. 8/7/58-F.C.]

D. R. KHANNA, Under Secy.

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*New Delhi-2, the 8th November* 1958

**S.O. 2443.**—In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to the post of Director, Song and Drama Division, Directorate General, All India Radio namely:—

**Short Title.**—These rules may be called Song and Drama Division, Directorate General, All India Radio Recruitment Rules, 1958.

**Method of Recruitment.**—Recruitment to the post of Director, Song and Drama Division, Directorate General, All India Radio, New Delhi shall be made in accordance with the provisions contained in the enclosed Schedule.

SCHE-

*Recruitment Rules for the post of Director Song and Drama Division,*

| Name of post | No. of posts | Classification | Scale of Pay | Whether selection post or non-selection post | Age limit for direct recruits |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| Director, Song and Drama Division, All India Radio. | One | G C S. Class I Gazetted. | Rs. 1300-50-1750. | N.A. | Between 35 & 45 years |

DULE

*All India Radio, Ministry of Information and Broadcasting*

| Educational & other qualifications required | Whether age & educational qualifications prescribed for the direct recruits will apply in the case of promotees. | Period of probation if any | Method of rectt. whether by direct rectt. or by promotion or transfer & percentage of the vacancies to be filled by various methods. | In case of rectt. by promotion/ transfer grades from which promotion to be made | If a DPC exists what is its composition | Circumstances in which UPSC is to be consulted in making rectt. |
|---|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| *Essential*<br>(i) Adequate to administrative experience.<br>(ii) Knowledge of Indian Cultural shows or/ and experience of organising cultural shows.<br>Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.<br>*Desirable* :—<br>(i) A degree from a recognised University.<br>(ii) Working knowledge of Hindi. | N.A. | — | By transfer Deputation failing which by direct recruitment. | *Transfer Deputation*<br>1. I.A.S. Officers in the senior scale.<br>2. Central Service Class I Officers in analogous grades of pay.<br>3. Officers of the Armed Forces of the Union in analogous grades of pay.<br>4. Class I Officers of the State services in analogous grades of pay. | N.A. | As required under the rules. |

[No. 25(40)/56-B(P)B(A).]

C. B. L. MATHUR, Under Secy.

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